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M. TULLII CICERONIS

PRO A. CLUENTIO ORATIO

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Jan 08.

M. TULLII C

PRO A. CLUI

ORATIO

WITH EXPLANATORY AND CRITICAL NOTES

BY

W. YORKE FAUSSET, M.A.

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Jan 08.

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PREFACE

It seems right to preface a new edition of the *Pro Cluentio* of Cicero with something in the nature of an explanation. Professor Ramsay's book has so long and so deservedly held a high place among English editions of the Classics, that any subsequent editor of this speech may well expect to be told that the field has already been taken up.

But greatly as the present work is indebted to its forerunner, it will be found to have a character of its own. In the first place, as I have stated more fully elsewhere, I have adopted a text substantially identical with that of Classen, in preference to the reactionary text of Professor Ramsay. Again, in legal and antiquarian matters, while frequently referring to his useful *Manual of Roman Antiquities* as well as to his Notes, I have drawn largely upon recent German authorities for the elucidation of the difficulties in which this speech abounds. Lastly, much entirely fresh matter, from various sources, is comprised, in the way of

illustration from Cicero (who is often his own best commentator), and of grammatical annotation. And here I have frequently laid Merguet's Lexicon to the Speeches under contribution.

The book is designed for the use of more advanced students, whether in the Sixth Form of a Public School or at the University. No single speech is better adapted than is the *Pro Cluentio* to afford a perfect mastery of Ciceronian idiom and vocabulary. Reference has been made throughout to Mr. Roby's Grammars: a feature of the work which should enhance its value in the eyes of those who have a real interest in Syntax. With regard to vocabulary, the Glossary should be useful to those who will extend it for themselves. It does not pretend to exhaust even the limited number of noteworthy words which occur in this speech: it merely exemplifies, in the case of some typical words, a method of studying word-meanings according to their genesis.

I have been somewhat chary of giving scraps of translation, partly because practical experience in teaching has convinced me that indiscriminate help of this sort enervates the learner, and reduces his task to a mere exercise of memory; partly because those who cannot dispense with such help, and those who know how to use it aright, will get it in its proper form

in the spirited Translation by Principal Peterson, to which also I desire to record my obligations.

It remains that I should express my hearty thanks to Professor H. Nettleship, at whose suggestion, indeed, this edition was undertaken, for some notes and help upon part of the proof-sheets, and for much kind counsel; to Mr. H. J. Roby for his untiring kindness in carefully revising the proof-sheets of the whole book (with the exception of part of the Critical Notes), and for the many valuable notes and criticisms which he has supplied; to Mr. J. A. Hamilton, Fellow of Magdalen College, Oxford, for the excellent Analysis which appears under his name in the Introduction; and lastly, to Mr. J. H. Fowler, of Trinity College, Oxford, and Manchester Grammar School, for his kind revision of the proof-sheets of the Introduction.

W. Y. F.

August 27, 1887.

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INTRODUCTION

I. The Trial of A. Cluentius Habitus: the Charges included in the Indictment and the law upon which it rested. Remarks on the Speech of Cicero in his defence.

§ 1. This trial took place in the year of Cicero's praetorship, B.C. 66, before Q. Voconius Naso, who as *iudex quaestionis* presided in the Assassination Court (*quaestio de sicariis et veneficis*), an office which was no sinecure at a time when the social and moral anarchy of Rome was tending rapidly to political chaos.

Aulus Cluentius Habitus, a Roman knight of Larinum, an Italian township on the northern border of Apulia, was accused by C. Oppianicus of having procured the death of several persons by poisoning. These persons were—

1. Vibius Cappadox, whose heir (it was alleged) Cluentius was.

2. A young man named Balbutius, who took a draught of poisoned wine intended for his friend C. Oppianicus (the younger), at the wedding-breakfast of the latter.

3. Statius Albius Oppianicus the elder, father of the prosecutor Oppianicus the younger, and stepfather of the defendant Cluentius.

§ 2. But the counsel for the prosecution, a young advocate of Pisaurum, T. Accius by name, also made great capital out of the general conviction that Cluentius had, eight years before this date, secured the condemnation of Oppianicus the elder by bribing the jury. In the *lex Cornelia de sicariis et veneficis*, which was administered by the *quaestio* before which Cluentius was tried, a special clause existed, dealing with this offence as 'judicial murder.' True, this clause applied only to those who were senators, or who held or had held magistracies by popular election: and therefore, tech-

nically at least, Cluentius was not liable under it.[1] But there are good reasons for believing that Accius accused Cluentius not merely collaterally, but expressly under this clause of the statute in question, as well as under the poisoning clause. We shall discuss this point more fully hereafter.

§ 3. This speech was delivered when Cicero was forty-one years of age. He was in the prime of life and intellectual vigour, and had risen by his own unaided talents and energy to a high position in public life. Not only was he acknowledged leader of the bar; he was also a force in politics, a champion of the Equestrian order (the powerful middle class of that day). As such, four years since, he had crushed the senatorial arch-criminal Verres by his irresistible eloquence, and in this very year had contributed not a little by his speech *pro lege Manilia*[2] to the success of the rogation which superseded Lucullus, the senatorial general, by Cn. Pompeius, at this time the leader of the Equites.

As yet, moreover, he had known no rebuffs and no humiliation: his triumph over Verres, against whom he levels a passing word of contempt in this speech, if it was not executed on as grand a scale as his defeat of Catiline, had not left behind it any sting of misgiving as to the possible consequences to himself of his action. It had left him the *regnum iudiciorum*. He had every reason to be satisfied with the past and to be sanguine as to the future. For his ambition naturally did not end with the praetorship: the wave of fortune was not likely to ebb until it had carried him to the consulship. He also occupied the chief place among the literary men of the capital. In proof of this, it is enough to say that Cicero had successfully combated the 'Asiatic style' of Q. Hortensius and the 'Attic style' of C. Licinius Calvus (the former the style of his own youthful productions, especially the *pro Quinctio* and *pro Rosc. Am.*), and formed an eclectic style which was truly his own, and acknowledged to be the best.

§ 4. After these considerations we shall not be surprised to find that the style of this speech is characterised, as far as the nature of the subject will admit, by all the highest qualities of the oratory of the speaker. We shall presently have to estimate the persuasive adroitness which could construct out of a confusing mass of facts and figments, plots

[1] §§ 148, 150, 156. [2] *Or. de imperio Cn. Pompeii.*

and counterplots, a coherent narrative with a dramatic unity of its own; in which the innocent Cluentius is the suffering hero, while Sassia his unnatural mother, and Oppianicus his stepfather, take the second and third *rôle* respectively in the drama of his sorrows. But we also recognise in the dark portrait of Oppianicus the work of the master-hand which afterwards limned the features of Catiline; and in fact a series of vivid pictures, often drawn in a few strong touches, passes before our eyes: the fearless Aurius denouncing the murderer of his kinsman in the crowded market-place of Larinum: the weak-headed profligate Asuvius and his traitorous friend: the travelling quack L. Clodius, who made short work of his patients when he was in a hurry, but was always successful in his own peculiar treatment: Ambivius, the innkeeper of the Latin Way: 'Doctor' Strato: and several others.

The course of the speech is enlivened with frequent narrative, in which humour and pathos are skilfully blended with the argument which the advocate wishes to drive home. Thus when he is describing the trial of Scamander, the accomplice of Oppianicus, whom he had himself defended, he diverts the jury—in the literal sense of the word—by a playful account of his youthful nervousness as he rose to speak, the shifts to which he was reduced in such a desperate case, and the ease with which the counsel for the prosecution disposed of them. While we laugh, we forget to criticise. Comparing this passage with a similar one in *Rosc. Am.* §§ 59, 60, we seem to see in it a finish and force and *verve* which is wanting in the earlier narrative: this is due to the more successful application of the asyndetic style. The superb narration of the trial of Oppianicus requires no praise: Staienus, conscript father, briefless barrister, and law-court jobber, gloating over the hoarded gold which was not yet his own, and with a stroke of genius devising means to make it so; Bulbus and Gutta, his dupes, the worthy pair over whose names ('Messrs. Onion and Cruet') Cicero makes so merry; and the final confusion of counsels among honest men. Even if Cicero is romancing, it is perhaps a case in which fiction gives us a better insight into the spirit of the times than truth would have done.

Again, the historical illustrations, such as the episodes of the review of P. Africanus the censor (in § 134), and of the altercation of Brutus and Crassus (in §§ 140, 141), remind

us, by the skill with which they are introduced, of the style of Cicero's later philosophical works.

Lastly, for passion and scathing irony few passages in the whole range of literature will compare with the magnificent bursts of eloquence which are to be found in this speech, such as the denunciation of Sassia's marriage with her son-in-law (§ 15), and the peroration in which she is held up to detestation as 'the wife of her son-in-law, the illicit rival of her daughter, the stepmother of the son of her womb.'

§ 5. We must then dissent from an able critic who declares that the *Cluentiana* 'is not a favourable specimen of Cicero's oratorical power: there is no connection in the events; there is no order of time. We are hurried from date to date, from place to place. The same person is described under different names; the same incident in different words. The result is a mass of threads so knotted, twisted, and entangled, that only patient labour can sort them out into intelligible arrangement.'[1] There may be much intricacy in the story which Cicero tells; confusion there is none, and those critics who find it are merely finding what they have themselves introduced.

The historical value of the speech cannot be exaggerated. It is in fact unique in this respect, that it gives us a glimpse, which cannot elsewhere be obtained, of the life and morals of a provincial town of Italy in the last century of the Republic. We know something about the moral and social condition of the capital from various contemporary sources, which are too familiar to need enumeration. Sallust (to take one instance) tells us how the nobler vice of ambition was succeeded by a lust for gold, and a passion for self-indulgence, which bred crimes scarcely human; from him we may learn that at Rome reformed institutions and laws were powerless to arrest moral decay—'quid leges sine moribus vanae proficiunt?' (Hor. *C.* iii. 24. 35.) But the story of Cluentius and Oppianicus is a most valuable supplement to this. As it was in Rome, so it was in Italy. If Rome had a Sempronia, an Aurelia Orestilla, a Fulvia,[2] Larinum had a Sassia, as wicked and as beautiful as they. The virtue of old Italy was as obsolete as that of old Rome. Sulla himself could not repair what he had done as

[1] 'Society in Italy in the Last Days of the Roman Republic,' in Mr. Froude's *Short Studies*, iii. (The account of the facts s somewhat misleading.)

[2] Sall. *Catil.* xv. xxiii. xxv.

much as any man living to demolish. Republican Rome had been tried and found wanting. It was reserved for the Caesars to prop up for a few centuries longer the tottering fabric of the Empire; there was strength and soundness in the provinces still. But for the moral diseases of their people the rulers could do little; they could 'but skin and film the ulcerous place.' The cause of truth and purity was in the keeping of a Greater than Caesar and of His obscure Jewish followers.

II. Was Cluentius accused under the Sixth Chapter of the *lex Cornelia de sicariis et veneficis*?

§ 1. At the outset of the speech Cicero notes that the speech for the prosecution was divided into two parts, the one relating to a public scandal with which his client's name had for years been unjustly associated—the alleged bribery of the jurors in the trial of Oppianicus (*invidia iam inveterata iudicii Iuniani*), the other lightly touching upon the charges of poisoning (*rationem veneficii criminum*). The same division he proposes to adopt in his speech. Not counting the introduction and peroration, very nearly seven-eighths of the speech deals with what he calls the *invidia iudicii Iuniani* or *Cluentianae pecuniae crimen*.[1]

§ 2. The *lex Cornelia de sicariis et veneficis*, passed by Sulla, covered both parts of the impeachment, though primarily it related to murder and assassination.

For seven centuries there had existed only one instrument for dealing with this crime—the law of Numa about *parricide* (quoted and explained in n. on *parricidium*, § 31): according to Pomponius *de orig. iuris* (Dig. 1, 2, § 22), the *quaestores parricidii* who administered it were mentioned in the Laws of the Twelve Tables; and any cases of murder that occurred were dealt with in their court (Rein, *Criminalr.* p. 401). But the party struggles and civil strife which had distracted Italy from the time of the reforming efforts of the Gracchi, and which had raged continuously and with heightened violence from the time of the Social War, culminating in the massacres and proscriptions of Marius and Sulla, had produced a state of morals appalling to contemplate. Sulla found himself called

[1] § 125.

upon to heal the social as well as the political disorders of the commonwealth, and he now stood before his countrymen in a fresh character, as the founder of the criminal law and criminal procedure of Rome. Foremost among the measures by which he hoped to consolidate his new era, and by 'human statute purge the gentle weal,' was the law of murder—the *lex Cornelia de sicariis et veneficis.*

For its provisions this speech of Cicero's is our principal authority. There are notices also in the lawyers, but in these it is not always easy to distinguish the original statute from its subsequent modifications.

Sulla had also, as Cicero informs us, embodied in this law a measure of C. Gracchus against judicial corruption on the part of senators.[1] Under this law C. Gracchus had constituted a new *quaestio.*

§ 3. It will be well to give a brief sketch of this law of Sulla, as far as the materials for the purpose avail us.

The First Chapter[2] related (*a*) to murderers and assassins under the general name *sicarii*;[3] (*b*) to those who had gone about armed with the intent to rob or murder; (*c*) to the instigator of a murder. In each case the presence of an *intent to take life* is essential.

The same or other chapters dealt with the crimes of arson, of selling a Roman citizen into slavery,[3] and of parricide:[4] and also with that of perjury[5] committed with intent to

[1] V. § 154, ea lege qua nunc Habitus accusatur, quae tunc erat Sempronia, nunc est Cornelia; § 151, hanc ipsam legem NE QUIS IUDICIO CIRCUMVENIRETUR, C. Gracchus tulit, with note there.

[2] Ulp. *Coll.* i. 3, Capite primo legis Corneliae de sicariis cavetur ut is praetor iudexve quaestionis, cui sorte obvenerit quaestio de sicariis eius, quod in urbe Roma propiusve mille passus factum sit, uti quaerat cum iudicibus, qui ei ex lege sorte obvenerint, de capite eius, qui *cum telo ambulaverit* hominis necandi furtive faciendi causa *hominemve occiderit, cuiusve id dolo malo factum sit*, cet. Cp. Cic. *Mil.* § 11.

[3] V. n. on § 21.

[4] In this extreme case, the original punishment was drowning in a sack; apparently this punishment was nominally allowed but practically superseded by burning alive, by the *lex Pompeia de parricidis.* Cp. Ulp. *Dig.* xlviii. 9, l. 1; l. 9 and 8, l. 3, § 5; Paul. *Sent.* v. 24.

The *lex Cornelia de iniuriis* (Ulp. *Dig.* xlvii. 10, l. 5), which the violence of the times had also necessitated, was probably a separate statute, though Zumpt believes that it was a chapter of the *lex de sicariis.*

[5] § 157, qui falsum testimonium dolo malo dixerit, of which Cicero speaks as if it were restricted in the range of its application like chapter vi. of this law (v. *infra*). This restriction is not found in the Digest (Marc.

bring a man to his death: and also (possibly) with other acts committed with the same intent.[1]

The Fifth Chapter, under which Cluentius was primarily accused, related to those who had aided and abetted poisoning by supplying the means.[2] Compare with this Chapter I. of the same law.

Lastly, the **Sixth Chapter** (incorporating, as we have seen, the law of C. Gracchus) dealt with what we may call judicial murder, and applied to all who should have conspired or combined to procure the condemnation in court of an innocent man, or should (acting in the capacity of judge or juror) have received a bribe for that purpose (the reference is doubtless to misconduct in criminal, not civil courts). And the peculiarity of this last chapter was that its application was restricted to those who had a seat in the senate, or held or had held a magistracy by choice of the people. Of the existence of this restriction there is ample evidence.[3]

§ 4. The question now arises: Was Cluentius a Roman Knight expressly accused under the sixth chapter of the *lex Cornelia de sicariis*?

It is certain that whether he was so accused or not, Cicero intended to convey the impression that he was, and a whole section of the speech (§§ 143-160) is devoted to a technical defence, which, at the same time, he ostentatiously, in deference, forsooth, to the wishes of his client, waives his right to make.

We must however be on our guard against an implicit

Dig. xlviii. 8. 1). Probably Cicero is speaking correctly for his own period, and the jurists of the Digest speak of the *lex Cornelia* as it was modified in imperial times. This hypothesis is rendered likely by the context in the Digest, which speaks of *deportatio* (an imperial punishment) as the penalty threatened. The original penalty under the law was 'aquae et ignis interdictio.'

[1] Lex Cornelia poenam deportationis infligit ei qui hominem occiderit eiusve rei causa furtive faciendi cum telo fuerit et qui venenum hominis necandi causa habuerit vendiderit paraverit falsumve testimonium dixerit, quo quis periret, mortisve causam praestiterit (Paul. *Sent. rec.* v. 23. 1).

[2] § 148.

[3] An extract in the Digest from Marcian (*Dig.* xlviii. 8. 1) gives the general meaning of this part of the law (altered to suit the time of Justinian): 'quive, cum magistratus esset publicove iudicio praeesset, operam dedisset, quo quis falsum iudicium profiteretur, ut innocens circumveniretur, condemnaretur. Praeterea tenetur qui . . . falsum testimonium dolo malo dixerit quo quis publico iudicio rei capitalis damnaretur; quive magistratus iudexve quaestionis ob capitalem causam pecuniam acceperit, ut publica lege reus fieret.'

acceptance of the orator's statements. We must remember his own warning, twice given; once in the course of this very speech (§ 139)—sed errat vehementer, si quis in orationibus nostris, quas in iudiciis habuimus, auctoritates nostras consignatas se habere arbitratur: omnes enim illae causarum ac temporum sunt, non hominum ipsorum ac patronorum; and again by the boast which Quintilian tells us he made in regard to this speech—se tenebras offudisse iudicibus in causa Cluenti, 'that he had thrown dust into the eyes of the jurors on the trial of Cluentius.'

§ 5. Now, it would be open to us at the outset to suppose that Cicero has misstated the *lex Cornelia*; that in fact Cluentius *was* liable under the Sixth Chapter, and was accused under it, but that Cicero, while defending him on the question of fact, has affirmed falsely that the provision in question related only to senators, and taken credit to his client for not resting his case on this technical basis. And indeed on another point (v. note 5, p. xiv.) he has been taxed with misquotation.

But enough has been said above to show that Cicero cannot be convicted, on the ground of anything in the Digest, of having misstated the *lex Cornelia de sic. et ven.* as it stood in his own day.

§ 6. Two (if not more) recent students of this speech, Dr. Carl Bardt and Mr. Davies, have taken up different positions. T. Accius, they say, had only *accused* Cluentius under the poisoning clauses of the *lex Cornelia*, although willing to take advantage to the full of his *moral* (though not legal) violation of the Sixth Chapter, on judicial murder: Cicero talks as if he were being actually tried under that chapter. Bardt has stated this position as forcibly as it can be stated, and a review of his main arguments cannot here be neglected.

From what has been said, it will be apparent that the orator is now accused of misrepresenting, by quotation, not the terms of the law, but those of the indictment actually preferred against Cluentius. And Bardt tries to show that this is done with a subtle ambiguity of expression, to which only the greatest orators have attained.

(*a*) To begin with, there is the careful division of the case against Cluentius into **invidia** and **crimina**: a distinction drawn in the exordium of the speech, constituting its natural line of cleavage, and reappearing in the antithesis of *falsa invidia* and *pericula* at its close (§ 200).

(*b*) In the transition to the section relating to the charges of

poisoning, Cicero twice uses ambiguous words: § 160, *reliqua* (these charges as opposed to that of bribery) *quia vestrae quaestionis erant, proferenda*; § 164, cognoscite nunc id, quod ad vestrum ius iurandum pertinet, *quod vestri iudicii est* . . . de criminibus veneni. That is, the charge of bribery is 'non vestrae quaestionis, non vestri iudicii': 'you have not before you the bribery charge.' And why not? The true answer is, because it is not a count in the indictment; but this would be inconsistent with the tenor of the speech, and the jurors are meant to understand the words thus—'because such questions do not fall under the cognisance of your court.'

(*c*) But there are also many isolated expressions carefully chosen so as to mislead. When speaking of the bribery charge, Cicero prefers the vague phrase *causam obtinere* (§§ 145, 156) to the usual term, *absolvi* (contrast *absolvatis* of a hypothetical parallel, § 158), and prefers to introduce the charge itself by *dicitur*, *dicitis*, and the like indefinite expressions (§§ 9, 39, 88, 90, 138), whereas the charges of poisoning are introduced by *dicis* or *dixisti*.

Again, the word *lex* is ambiguous; it may denote either the whole law or the Sixth Chapter alone: § 154, illi (equites) non hoc recusabant, ne ea *lege* accusarentur, qua nunc Habitus accusatur, quae tunc erat Sempronia, nunc est Cornelia: intellegebant enim ea lege equestrem ordinem non teneri. So § 156: A. Cluentius causam dicit eques Romanus ea lege, qua senatores, cet.

(*d*) Lastly, there is the difficulty of understanding how the prosecution could have impeached Cluentius under a statute under which they knew that he was not amenable.

§ 7. Cicero was doubtless fully capable of the chicanery which is here attributed to him. Of that the *Cluentiana* will afford ample evidence. But the indictment which Dr. Bardt brings against him, while strong on the side which ancient rhetoricians would have called the 'probabile ex vita,' is not so strong in the 'probabile ex causa.' If we take his last argument first, it is outweighed by a difficulty on the other side: could Cicero have deliberately imposed upon a Roman jury as to the counts comprised in the indictment? One juror, who had kept his eyes open, might have exposed the glaring sophism, and the advocate's credit would have been ruined.

Next, if we take the other arguments *seriatim*, their cumulative force is considerable, but they will not all bear an individual scrutiny. As to (*a*), why should not the orator have

consistently used the most invidious term he could find to characterise the charge which he felt to be the best authenticated? And in §§ 8, 125, the latter too appears as *crimen*, *Cluentianae pecuniae crimen*.

As to (*b*), the jurors must have all belonged to the country tribes, if Cicero could reckon upon their believing that such questions (as that of judicial corruption) did not 'fall under the cognisance of their court.' Whereas, upon the view which I hope shortly to propound, a good sense is given: 'the charge of bribery against Cluentius, a Roman *Knight* (be it remembered), is one which does not concern your court, which does not fall within the scope of the *lex Cornelia* which that court administers, and which consequently you are not by your oath bound to investigate.' The orator in fact takes his stand, despite his disclaimer, on the letter of Chap. VI. of the *lex Cornelia*.

As to (*c*), the distinction of usage in the speech is not so consistent that much importance can be attached to it. It is neglected in § 165, in § 168, and in §§ 169, 183, where *obiectum est*, *dixistis*, *dicitis* severally appear in connection with the charges of poisoning.

But it is when Cicero speaks of *haec lex*, *ea lex*, that the advocate of this theory is reduced to his worst shifts. In § 116, 'hac lege ipsa,' upon any natural interpretation, refers to the Sixth Chapter of the *lex Cornelia*, and in §§ 154, 156 Cicero says outright that Cluentius was accused, is pleading his case, under the Sixth Chapter of the *lex Cornelia*. Here then we must suppose him to have passed from prevarication of a somewhat clumsy sort to absolute untruth. For it is idle to urge that the latter of the objectionable passages is preceded and followed by perversions of fact. The issue is simple: 'A. Cluentius causam dicit eques Romanus ea lege, qua lege senatores et ei, qui magistratum habuerunt, soli tenentur.' If this is not true, it is what the orator himself would have styled 'magnum et impudens mendacium.'

§ 8. Two other views may be noticed, which in one respect accord with that of Dr. Bardt: in so far as they too suppose that Cicero wished to misrepresent the terms of the indictment.

Zumpt[1] supposes that the main charge against Cluentius really was that of bribery in the trial of Oppianicus: it was pre-

[1] *Criminalr.* ii. 2. 32, 33.

ferred however, not under Chap. VI. of the *lex Cornelia*, but under the clause mentioned above (p. xv. n. 1), for which our only authority is Paulus—mortisve causam praestiterit—though Z. refers also to Cic. *Phil.* ix. 7, is . . . mortem attulit, qui *causa* mortis fuit; Quint. vii. 3. 31, 4. 41. This he supposes immediately followed the clause about 'judicial murder,' and related to all persons without distinction. The question before the court was the interpretation of this clause—'or has been the cause of death.' The prosecutor explained it by the *aid* of the preceding clause. But Cicero spoke as though Cluentius had been *accused* under the preceding clause, and had not much trouble in proving that under it he was not, as a knight, liable. A similar view may be deduced from the statement of Rein:[1] except that for the clause quoted by Paulus (which he assigns to imperial times)[2] the clause '*falsumve* testimonium dixerit' should be substituted. He seems to allow that the application of the clause about 'judicial murder' may have been a matter of dispute among the lawyers of the time: the clause about false witnesses, however, applied to all persons without distinction. We should hence infer that Cicero was misleading the jury when he referred the latter to senators only.[3] Thus in fact he is guilty of a twofold misstatement: first as to the legal support of the indictment, and secondly as to the terms of the law.

§ 9. We find ourselves then constrained to fall back on what is substantially the old view. Cluentius was accused under both clauses of the *lex Cornelia*, the fifth and the sixth. Accius knew that in regard to the former his case was strong in law and weak in facts, but *vice versa* in regard to the latter. By combining the two counts in his indictment he hoped to ensure a condemnation.

We might consider this proceeding more worthy of a *desultor* riding in the Circus Maximus than of an 'adulescens bonus et disertus' addressing a court of law in the Forum. It seems also singularly unfair that a knight should be charged under a statute applicable to senatorial jurors for an offence committed when jurors were still all senators, *i.e.* before the

[1] *Criminalr.* pp. 410, 411.
[2] *Ibid.* p. 416.
[3] It is not correct, as Bardt (p. 5) perhaps implies, to credit Rein himself with this deduction. He simply says (p. 430) that Cluentius was accused first of having bribed the Junian commission; secondly, of having poisoned Oppianicus.

law of L. Aurelius Cotta, B.C. 70: that in fact it should be proposed to make a new interpretation, amounting to an alteration of the law, retrospective in its action. But in weighing these objections it must be remembered that the spirit of Roman justice at this time was not the same as the spirit of modern law-courts, which is the product of agencies now many centuries at work. In the interval the whole structure of Roman law has been reared, of which then the foundations were barely visible: and generations of jurists and philosophers have laboured to purify and enlarge the ideal of justice.[1]

As to the latter of the preceding objections, we may perhaps wonder that if Accius really laid himself open to it, Cicero did not avail himself of it. Probably he felt that it was less cogent than his main argument, that Cluentius was not, by the letter of the law, in any way liable under Chapter VI. For that argument of course Accius was prepared. We may suppose that he had anticipated it by a direct negative. He probably urged that a correct interpretation of the *lex Cornelia*, as it stood, was sufficient to bring *all* offenders, according to Chapter VI., including the knight Cluentius, under the scope of that chapter. This is implied in § 150, iniquum tibi videtur, Acci, esse non isdem legibus omnes teneri; § 156, agit sic causam T. Accius, adulescens bonus et disertus, omnes cives legibus teneri omnibus. The former of these passages rather than the latter gives Accius' real words. Again § 145, indignum esse facinus, si senator iudicio quempiam circumvenerit, legibus eum teneri: si Eques Romanus hoc idem fecerit, non teneri. In § 160, ne conatus quidem esset dicere, id quod multis verbis egit, iudicem, *quod ei videatur* statuere et non devinctum legibus esse oportere: these words imply that Accius had proposed some subjective interpretation of the letter of the law. And he urged the jurors to condemn Cluentius, and thereby establish a salutary precedent. His antagonist was not slow to take up the political gauntlet thus thrown down.

[1] Even now, too, questions of moral obligation will arise, relating to advocacy, which cannot be solved off-hand. Cp. some remarks in an article on 'Casuistry' by the Rev. Chancellor Cazenove (*Contemp. Review*, June 1874).

III. Narrative of the past history of Cluentius and Oppianicus as it may be gathered from Cicero's speech. How far is it trustworthy?

§ 1. The intricacy of the plot is certainly the greatest difficulty which confronts the student who takes up the *Cluentiana* for the first time. Hence a careful examination of the genealogical and other tables to be found in this Introduction cannot be too earnestly recommended. It may be well, however, to supplement these by a running narrative based upon the words of Cicero. Oppianicus has indeed fared badly in his biographer, whose statements we may here and there find occasion to criticise, but lack the means to controvert.

§ 2. A. Cluentius Habitus the elder, father of the defendant, was the leading man in the township and district of Larinum, in the country of the Frentani, where he died in B.C. 88, leaving behind him his wife, Sassia, and two children, a son, A. Cluentius Habitus, and a daughter, Cluentia, the elder of the two, who soon afterwards married A. Aurius Melinus, her first cousin, son of Sassia's sister. It was a happy marriage. But here the fatal act of passion intervenes, which was to open a chapter of horrors, 'initium huic cum matre simultatis' (§ 17). Sassia, who seemed able like a Cleopatra or a Canidia to fascinate and to blast by her imperious beauty, alienated the young husband's affections. He divorced his wife and married her mother.

§ 3. We are soon introduced to a new actor, whose hostility to the defendant had been as bitter, but less successful,—Statius Albius Oppianicus the elder, an *eques* of Larinum. It is the interest of the advocate to depict his character and career in the darkest colours, so as to establish an 'argument from antecedents' (*probabile ex vita*) for his guilt in regard to the charge of poisoning afterwards brought against him by Cluentius, and the illicit means he took to procure an acquittal. He is a sort of Roman 'Bluebeard'—'homo in necandis uxoribus exercitatus,' § 52: his first wife Cluentia, aunt of the prosecutor, he poisoned: the next, Magia, died: the third, Papia, widow of his brother-in-law Cn. Magius, married him under very dishonourable circumstances and was divorced by him: the fourth, Novia, died: last came Sassia. We may notice, as an incidental proof of the general truthfulness of the details, that

Cicero does not make nearly so much of Oppianicus' cruelty to his wives as he might have done: even the expression quoted above from § 52 is not his own, but that of P. Cannutius, who opposed him on the trial of Scamander. In fact Cluentia is the only one of whose end he gives us precise information.

Oppianicus then was about this time charged with the murder of his brother-in-law, M. Aurius, son of Dinaea, a wealthy lady of Larinum, and brother of Magia.[1] Of her children, Num. Aurius, Magia, Cn. Magius successively died; another, M. Aurius, taken prisoner in the Social War and sold into slavery, was supposed to be long since dead. Impelled by insatiate avarice, Oppianicus first secured the reversion of the inheritance of Cn. Magius to his son by Magia, by taking practical steps to prevent the accomplishment of the testator's desire to bequeath it to his posthumous son. Then, when the long-lost M. Aurius was reported to be safe and sound, though in captivity, and his mother in her lonely old age rejoiced to think that fortune had spared her one of her children, this bold and wicked man made short work with her dreams of happiness. One of his agents, L. Clodius, a travelling quack, removed Dinaea by a short and sharp 'illness' (as it is called in § 22: cp. § 40 for a less ironical account); another bribed the informant of Dinaea to mislead her friends, who were searching the country for M. Aurius; and another assassinated M. Aurius, to whom the unfortunate mother had left a large legacy, bequeathing, however, the bulk of her property to Oppianicus the younger (son of Oppianicus and Magia). Thus Oppianicus after a judicious manipulation of Dinaea's will, found himself (through his son) sole heir to the whole property of the unfortunate family whose happiness he had wrecked, and in whose deaths (it is implied in § 40, quo [medico Oppianici] curante suos omnes perdidisset) he had had a hand. He had now however to reckon with the friends and relatives of M. Aurius, and had to save his life by a hasty retreat to the camp of Q. Metellus, who was acting for Sulla against the Marians. He returned to Larinum invested with the authority of Sulla to punish those townspeople who had taken what was now the vanquished side: and proscribed and put to death his enemies, among them A. Aurius Melinus, husband of Sassia.

§ 4. He now began to think once more of marriage: nor

[1] Cp. Genealogical Table B.

was it long before he found a lady whose 'fine sympathies and resolute spirit' (humanitas constantiaque, § 26), as well as her not inconsiderable fortune, singularly attracted him. Sassia did not reject the advances of her husband's murderer: she merely expressed some reluctance to undertake the responsibilities of a stepmother: an obstacle which Oppianicus succeeded in overcoming by the speedy removal of two of the obnoxious children. A third, however, his son by Magia, lived to evince his gratitude to his father for his life by taking up his cause against Cluentius in this prosecution.

The category of Oppianicus' crimes thus far committed is not complete without the mention of the murder of his brother C. Oppianicus, and his brother's wife, then in her pregnancy, as also the murder of Asuvius of Larinum. The motive of these crimes also was lust for gain. The last mentioned nearly brought him into serious trouble: he was actually seized and brought before the tribunal of Q. Manlius, triumvir capitalis at Rome, but escaped by bribing him to discharge him. We cannot at this point abstain from an expression of surprise that Oppianicus had not been brought to justice before this for some of his previous crimes. If Cicero is not (as his words in § 10 might seem to imply) blackening the character of the dead in order the more easily to whitewash the living, we can only suppose that in the general disorder of the period of the Social War and Sulla's proscriptions the irregularities of Oppianicus had been overlooked. But some of them belong to an earlier period.

§ 5. A. Cluentius Habitus, the present defendant, is now brought into direct collision with his stepfather Oppianicus, by no fault of his own, if we are to believe Cicero, who now proceeds to the 'probabile ex causa,' or argument based on the probable *motives* which Oppianicus may have had for wishing to murder his stepson. One of these is the insatiate avarice of Oppianicus, who hoped through his mother Sassia to become the possessor of his property. Another is the personal dislike which he felt towards him, because he had asserted, in opposition to himself, the rights of the municipality of Larinum in the matter of the college of Martiales, denying that they were free Roman citizens.

These suggested motives seem inadequate, the latter particularly. But the former also presupposes a good deal. First, an intention of murdering Sassia. One murder more or less may have been nothing to Oppianicus. But when

Sassia was gone, her daughters remained, and she was likely to have provided for them in her will.

§ 6. The plot of Oppianicus to remove his stepson by poison speedily ensues. It was to be carried out by the instrumentality of a low knave named C. Fabricius, through whom overtures were made to Diogenes, the slave of Cleophantus, a physician who was then in constant attendance on Cluentius. The slave prudently listened to him, and then went straight to his master, who informed Cluentius. By the advice of his friend M. Baebius, a senator, Cluentius bought the slave from Cleophantus. (Another witness to the truth of these facts was P. Quinctilius Varus, a man of unimpeachable character, who had heard them at the time from Cleophantus, § 53.) Then a trap was laid; a secret interview was arranged between Scamander, a freedman of Fabricius, and Diogenes: eye-witnesses concealed themselves to watch it, and surprised Scamander with the poison and the price for it both in his hands.[1]

This story as told by Cicero can scarcely be said to go on all-fours. Why was Diogenes selling the drug to Scamander, instead of taking it to administer himself? This looks as if the whole thing was got up by the friends of Cluentius to ruin Oppianicus, whom he had every reason to hate. Besides, the attempt to poison is discovered at a very early and imperfect stage: it depends on the sole evidence of Diogenes, who was at the time of the trial actually a slave of Cluentius: why bought by him it is not at first easy to say. Those who disbelieve this whole narrative reply, Because a slave could not give evidence against his own master. On the other hand, we may find sufficient reason in the following considerations: the enemies of Cluentius would gain courage, seeing that now they had his *own* slave to deal with; they would be tempted on to their own ruin. Cluentius, too, might without suspicion confer directly with his *own* slave. And for the substantial truth of his story, Cicero can appeal to the evidence of respectable men: would M. Baebius have lent himself to a vile plot for the ruin of Oppianicus? Lastly, there is the fact that the almost unanimous verdicts of two Roman juries ratified this story.

§ 7. Cluentius proceeded, before attacking the prime mover of this attempt on his life, to impeach two subordinates in

[1] Cp. crit. n. § 47.

the plot, Scamander and Fabricius. The first named was defended by Cicero himself, who professes to have been outmatched at all points by the other counsel, P. Cannutius: by the side of the accused sat Oppianicus himself, who identified himself completely with his case. The only vote recorded for Scamander was that of the notorious Aelius Staienus. This then was the first *praeiudicium* or 'previous decision' against Oppianicus. Fabricius, who was next accused, was fain to betake himself for his defence to the brothers Caepasii. His cause, desperate enough already, was made even worse by his advocate: he was unanimously convicted. This was the second *praeiudicium*.

Lastly, Cluentius impeached Oppianicus himself, before the same jurors and presiding judge (C. Junius) as those who had tried Scamander and Fabricius.[1] We now enter upon the history of the famous 'iudicium Iunianum,' which supplied L. Quinctius and other agitators with a popular cry against the senatorial juries, until these gave place, in B.C. 70, to those constituted under the *lex Aurelia*.

§ 8. According to Cicero, Oppianicus, knowing the hopelessness of his position, had recourse once more to Staienus, who had already sold him his vote at the trial of Scamander. To him he handed a sum of 640,000 sesterces (£5440), which was to be distributed among sixteen members of the bench, whose votes, together with his own, would make up the necessary majority for acquittal. Staienus, when he had once got the money, found himself very loath to part with it: a little reflection convinced him that it would be unnecessary to do so if he could procure the condemnation of Oppianicus. This he set himself to do. By promising a bribe from the accused to Bulbus, Gutta, and other jurors, and then disappointing them on the pretence that Oppianicus had played him false, he made it certain that they would all follow his example and vote to a man for a conviction: in this event he had good hopes that there would be no one to reclaim the money.

As to the latter of Staienus' expectations, it was frustrated in the same way as the poisoning plot in which Scamander was employed: again there was a private interview, and 'viri boni' secreted behind the arras. By the help of their evidence Staienus was forced to disgorge (§ 78). But the conviction had followed in due course. Cannutius, the

[1] §§ 55, 56, 59.

counsel for Cluentius, got wind of bribery, and, thinking to steal a march upon the other side, exercised what seems to have been the right of the prosecution, and called for the close of the pleadings. It is a significant fact that Staienus was not in court at the time. The tribune L. Quinctius, advocate of Oppianicus, used his official power to bring him up to vote. By Oppianicus' choice the voting was open. What was his dismay when Staienus, Bulbus, Gutta, on whom the lot happened to fall first, voted Guilty! Many of the other jurors, unable to conceive that this worthy trio could vote otherwise than as they were paid to vote, supposed that Cluentius had bribed, and therefore voted Not Proven, preferring to reserve judgment before condemning one who, however guilty, might not have had fair play in his trial. Of the remainder, the rest of the corrupt seventeen took their cue from Staienus and convicted: five only voted Not Guilty.

§ 9. There is some difficulty in determining the exact proportions which made up this vote, the result of which was that Oppianicus was condemned by a narrow majority. In the *pro Caec.* § 29, Cicero says of this verdict, and of the conduct of Fidiculanius Falcula, one of the jurors in particular: 'In eum quid dicam nisi id, quod negare non possit, venisse in consilium publicae quaestionis, cum eius consilii iudex non esset, et in eo consilio, cum causam non audisset et potestas esset ampliandi, dixisse sibi liquere; cum de incognita re iudicare voluisset, maluisse condemnare quam absolvere: cum, *si uno minus damnaret, condemnari reus non posset*, non ad cognoscendam causam, sed ad explendam damnationem praesto fuisse?' That is, a single vote turned the scale against Oppianicus, and that vote was Falcula's. Thirty-two jurors had to vote (§ 74): the passage quoted imports that the division was 17 to 15; an even division (16 to 16) would have been held a verdict, if not for the defendant, at least in his favour. An adjournment would have ensued. (Cp. the words of § 74.)

Prof. Ramsay says—The vote stood as follows: *nine* jurors of unimpeachable character gave a verdict of Guilty (here follow the names, which occur in § 107, P. Octavius Balbus, etc.). *Eight* jurors, suspected of being venal, also gave a verdict of Guilty, viz., Staienus, Bulbus, Gutta, P. Popilius, Fidiculanius Falcula, Aquilius, Septimius Scaevola, Egnatius. The *five* who said Not Guilty, and the remaining *ten* who said

Not Proven, are not named in this speech.[1]—This gives 17 against, 15 for, which is the right division. But when we come to examine § 107, we shall find reason to propound the opinion that the names there given are those of persons who voted Not Proven. This would give 18 against, 14 for:[2] which cannot be reconciled with the statement in the *pro Caecina*. We can only suppose that in § 107 Cicero does not give all the names of those who voted Not Proven, who were ten in all, not nine.[3] This will make the division 17 to 15.

§ **10.** Such however is the version which the orator gives to the facts of the iudicium Iunianum, in reply to the assertion of the opposite side, that the seventeen jurors aforesaid were bribed by Cluentius. We cannot but admire the genius, which out of such sorry materials could create such a masterpiece of fancy; nowhere has Cicero shown more insight into the springs of human action, or drawn more lifelike portraits, than in his description of the worthy trio, Staienus, Bulbus, and Gutta. Of course this ingenious narrative must suffer from a closer scrutiny. It will be well to invite the student's attention to some points in it.

It is prefaced by a glaring fallacy, that of § 64: if there was bribery, it is argued, it must have been employed either by Cluentius or Oppianicus: the third alternative, that it was employed by both, being quietly ignored. It is also assumed as self-evident that the conviction of Oppianicus must follow when the conviction successively of Scamander and Fabricius had preceded, the jurors being bound by these praeiudicia, which were of their own making. This again is

[1] V. his Introd. p. 18, note.

[2] *i.e.* 9 vote N. L.: 5 Not Guilty: 8 vote Guilty: 10 remain, who must also have voted Guilty. V. n. on § 106.

[3] This seems better than to suppose (with Peterson) that Cicero is quoting a certain number of names from the list both of those who voted N. L. and those who voted C. The tone of the passage precludes us from supposing that the names are not those of persons in the same category.

Zumpt (ii. 2. 128) suggests that for a decisive verdict it may have been essential that the number of N. L. voters should be no more than one-third of the whole number: in this instance less than 11 out of 32. (This is a mere conjecture, on the analogy of a provision in the *lex Acilia.*) Thus 10 vote N. L., 5 Not Guilty: the other 17 vote Guilty. (This is Niemey r's view, *Progr.* Kiel, 1871.)

Klotz (*Inhalt*, p. 219, in *Sämmtl. Reden Cic.*) says that 32 jurors, with the exception of five, found Opp. guilty. Probably he mistook the sense of § 106, condemnare . . . paulo posterius maluerunt, where v. n.

not demonstratively proved: at any rate five jurors, whom Cicero does not venture to accuse of corruption, did not recognise the obligation of those previous verdicts (§ 76). And if the N. L. voters were so convinced of the guilt of Oppianicus as Cicero would have us suppose, it is scarcely likely that the mere suspicion that some of their less worthy colleagues were about to vote the right way from wrong motives would have determined them to suspend their vote of Guilty. Altogether the want of precise statement as to the composition of the vote which condemned Oppianicus is unsatisfactory: there is not a hint (in this speech) of the narrowness of the majority by which he was found guilty.[1] Again it is the knaves who give the right verdict, the honest men who withhold it or give the wrong verdict, if Cicero is to be believed. Staienus's behaviour is also an enigma. How could he have staked his 'spes maiorum praemiorum' (§ 74) on the precarious (or, as the event showed, hopeless) chance of embezzling the 640,000 sesterces in case Oppianicus was condemned? Had not Oppianicus powerful friends, such as Quinctius, to act in his behalf in that contingency? It cannot of course be questioned that money passed from Oppianicus to Staienus, since it was a notorious fact that after the trial the former recovered it, though, be it observed, we do not read that he recovered precisely 640,000 sesterces (§ 78). But we are free to conjecture that money did also pass from Cluentius to Staienus; in fact that the former outbid Oppianicus, and that the latter therefore left him in the lurch for something more substantial than the *chance* of embezzling the deposit. This may help to explain his absence from court when Cannutius called for the verdict. The prosecution were confident of a majority without him (having secured, as we shall see, Fidiculanius Falcula); the defence could not spare him. He himself naturally arranged to be absent from court, knowing what Cannutius meant to do, and not wishing to create a sensation by his vote, or to lose the sesterces of Oppianicus. But Quinctius, acting for Oppianicus, forced him to return. On this theory the conduct

[1] Zumpt indeed sees an argument in this for the view that Cluentius bribed. Leaving the N. L. voters out of account (who could not be reckoned upon), 16 votes were enough to ensure *acquittal* (§ 74). But 17, we know from Cic., laid themselves open to corrupt offers. And we have proved that 17 did actually *convict*. The inference is obvious to us, and Z. thinks it would have been obvious to the jury, if Cic. had supplied them with the second premiss (Z. *Criminalr.* ii. 2, pp. 128. 129).

of Staienus and his confederates accords with the conduct of Verres, whom Cicero himself accuses of having *similarly* accepted bribes from both parties, favoured the higher bidder, and refused to return the money of the other.[1]

§ **11.** To return to the narrative. The penalty was outlawry (*aquae et ignis interdictio*), the heaviest which was generally inflicted upon a Roman citizen in republican times, involving as it did the practical loss of *caput*. Cicero's eloquence revels in the description of the forlorn and wandering life of one who was civilly, though no longer in a religious sense, under a ban. But the miseries of this banishment were not without their alleviation; it was passed not in the bleak solitude of some Tomi, but in the fairest district of Italy; the exile might at times find a welcome at the villa of an old friend such as Quinctius, and he even rented some sort of lodging at the very gates of Rome. Sassia, too, did not altogether desert him, though she is accused of unfaithfulness to her husband, who heard of it through a trusty slave called Nicostratus. About two years after his trial Oppianicus died at his suburban lodging, of injuries sustained by a fall from his horse, or, as Sassia professed to believe, and as the prosecutor alleged, of poison administered to him in bread by one M. Asellius, at the instance of Cluentius. At the same time it is worthy of remark that he had been for a long time in failing health.

This was in the year B.C. 72. The friends of Oppianicus at Rome had not meanwhile been idle, especially as political feeling reinforced personal considerations. A series of prosecutions was instituted against the guilty, or presumably guilty, jurors and judge, and Cluentius himself became the object of intense popular dislike (*invidia*).

§ **12.** It is not necessary to enter very minutely into these prosecutions, most of which ended in convictions, urged in the present trial by the prosecution as so many recorded verdicts against Cluentius (§ 88).

[1] In *Verr.* ii. 2. 78, 79, si illud est iam flagitiosum . . . ob rem iudicandam pecuniam accipere, quanto illud flagitiosius . . . eum a quo pecuniam ob absolvendum acceperis, condemnare? . . . scelus est accipere ab reo, quanto magis ab accusatore? quanto enim sceleratius ab utroque? . . . Cum vero fidem ac religionem tuam iam alteri addictam pecunia accepta habueris, post eandem adversario tradideris maiore pecunia, ei quem fefelleris, ne pecuniam quidem reddes? quem mihi tu Bulbum, quem Staienum? quod umquam huiusce modi monstrum aut prodigium audivimus aut vidimus, qui cum reo transigat, post cum accusatore decidat?

First came the condemnation of C. Junius, the *iudex quaestionis*,[1] who had presided at the trial, and with whose name it was henceforth associated quite as often as with that of the accused.[2] The impeachment preferred by Quinctius was based on technical grounds, mainly in connection with the *subsortitio* or supplementary appointment of Fidiculanius Falcula, which Junius was suspected to have made in the interests of Cluentius. Here it suits the convenience of Cicero to call the charges 'frivolous and trumpery'; he had expressed a different opinion on another occasion.[3]

Closely connected with this trial were those of C. Fidiculanius Falcula himself, who was accused in the first instance of informality in acting as a juror in a case in which the decury to which he belonged was not competent to act. He was acquitted on this charge, but soon afterwards directly accused of having received a bribe from Cluentius, and found not guilty. Cicero does well to make much of this verdict; it is a strong testimony for Cluentius. Yet in the *pro Caec.*, delivered only three years before the present speech, the orator accepts the popular opinion that Falcula gave the decisive vote, and that he had got 50,000 sesterces for it; that is, Cluentius had outbid Oppianicus, who gave 40,000, by 10,000 sesterces.[4]

The other verdicts were adverse to Cluentius, even if only indirectly so. Bulbus was found guilty of *maiestas*; Popilius of *ambitus*; Gutta of the same; Staienus of *maiestas*; Scaevola of *repetundae*. In all these cases their alleged misconduct in the trial of Oppianicus told against the defendants; in the last named, it was taken into account in the *litis aestimatio*, or assessment of damages which followed the verdict.

§ **13**. There were also other 'decisions,' as the prosecution called them, though Cicero disputes the propriety of the term.

[1] V. n. on § 89.

[2] Iudicium *Iunianum* or *Albianum*.

[3] *Verr.* ii. 1. 157; v. n. on § 91.

[4] Cp. n. on § 104. The passage in *pro Caec.* § 28 runs: 'Cum ita vehemens acerque venisset, ut non modo Caecinam periurio suo laederet, sed etiam mihi videretur irasci, ita eum placidum mollemque reddidi, ut non auderet . . . iterum dicere, quot milia fundus suus abesset ab urbe. Nam cum dixisset minus IↃↃↃ, populus cum risu acclamavit ipsa esse. Meminerant enim omnes, quantum in Albiano iudicio accepisset.' When he said 'less than 50,' the people cried that it was just his figure; fifty thousand was the bribe he took in the famous trial. (The rest of the passage should be read.)

The censors had stigmatised several of these persons on the ground of their complicity in this public scandal: Popilius, although in his case that perfect accord in the action of the two censors, which was essential to its value in the argument, was wanting[1]; Gutta and M. Aquilius; and lastly Cluentius himself.

Then again one Cn. Egnatius had disinherited his son for the part he had taken in the same trial. Also, a resolution of the senate was to be found among the records of that assembly, calling for the appointment of a special commission to deal with those who were responsible for this miscarriage of justice; but nothing came of it. The orator can therefore fairly urge that the misconduct of his client, which had been discussed for years in the heated atmosphere of political meetings, had only once been the express subject of a judicial inquiry, and on that occasion the verdict had been favourable to Cluentius.

§ **14**. We pass next to the brief narrative of the deaths of Vibius Cappadox and Balbutius, the latter of which was said to have taken place at the wedding-breakfast of Oppianicus the younger. Accius had adduced certain instances of violent conduct and rapacity, said to have been exhibited by Cluentius at various times; this was the *probabile ex vita*, which was to prepare the minds of his hearers for the charges which he hoped to prove. Cicero makes short work of both. He is evidently no longer on thin ice; he can afford to be somewhat careless in the reply which he vouchsafes. 'What has Habitus ever done'—thus he deliberately begs the question—'to make you think him capable of such a deed?' The fact is, 'res se ipsa defendit.'

§ **15**. But the immediate occasion of the present trial was, if we are to believe Cicero, the persistent animosity of Sassia towards her son Cluentius, and her conviction, or at any rate affirmation, that he had poisoned her husband.

This charge was supported, it would seem, by more serious arguments than the other charges of poisoning, but although treated by Cicero at greater length, is scarcely treated more seriously. These facts, as he narrates them, bring the plot of the speech (if we may be allowed the expression) to its ghastly *dénouement*—the unnatural mother bringing her son to trial for his life.

[1] V. § 132, note.

§ 16. Immediately after her husband's death Sassia determined to institute an inquiry into its causes. To this end she purchased Strato, a slave of A. Rupilius, her late husband's physician, and examined him by torture, together with Ascla, one of her own slaves, and the faithful Nicostratus, whom she had forced her stepson Oppianicus the younger to give up to her. The examination was held in the presence of a council of respectable men, friends of Oppianicus, but in spite of the cruel severity employed, her object, which was to get evidence against her son Cluentius, was not attained. A fresh and even more cruel inquiry was held; nothing was extorted from the loyal slaves, and Sassia was compelled by the witnesses to desist from further cruelties. Nicostratus was restored to his master; Strato was taken into favour by his new mistress, and established at Larinum as a medical practitioner. Three years passed in inaction; her malice was only dormant. Towards the end of that time she married her stepson to her daughter by A. Aurius Melinus, wishing by this connection, and the hopes of a succession which it involved, to acquire a complete hold upon him. This step was well-timed; the services of young Oppianicus were speedily to be called into requisition. Our attention is invited to a story of crime taken from the annals of slave-life, but not at all more hideous than the misdeeds of the high-born and the free which occupy the main part of the speech. Strato stole some money from a chest, murdered two of his fellow-slaves, and threw their bodies into the fish-pond. By an accidental discovery the guilt was brought home to the offender; a boy who was in the secret told the truth to his mistress. She seized this excuse to put Strato, and with him Nicostratus, once more upon the rack. This time no respectable witness was present. The depositions thus extorted were taken down, and now, at the trial of Cluentius, Sassia produces them in evidence against him. But Cicero refuses to recognise them, for they contain not a word about the theft and murders of Strato, which were certainly the main subject of inquiry; they are not properly attested; and of the deponents, Nicostratus is not forthcoming, Strato was forthwith crucified, having had his tongue cut out.

§ 17. The narrative closes with a vivid description of the preparations for the trial; there is Sassia, on the one hand, journeying to the capital from the distant shores of the Adriatic, with her ample retinue and stores of wealth, yet

avoided and abhorred by all she met; on the other hand there are the deputies of Larinum, Teanum, Luceria, Bovianum, and all the country-side, flocking to Rome to testify their esteem and love for their persecuted countryman. So general has the exodus been that the defence of Larinum is at present committed to the women and children!

§ **18.** Few will seriously doubt that Cicero has satisfactorily disposed of the charges of poisoning. There are flaws in his reasoning, which probably no one knew better than he himself did. Thus the argument that the poison must have been administered in a liquid and not in bread is worthless. And the orator gives his own version of the story of Oppianicus' death with some hesitation (*de equo cecidisse dicitur*, § 175), and without vouchsafing evidence. But then it was only incumbent on him to prove the negative of the version given by the prosecution. Again, with regard to the depositions of the slaves, it is quite as likely that he should have refrained from stating the contents of these, because he was unwilling to weary his auditors, as because he intended to conceal facts. In fact, unless we are to accept Dr. Bardt's hypothesis, that this speech was a deliberate, and, as it proved, a successful attempt to draw a red herring across the trail, it is idle to imagine that the case of the prosecution, with regard to the charges of poisoning, was any stronger than Cicero represents it to have been. Of Cluentius' acquittal there can be little or no doubt, in view of the boast which is attributed to his advocate by Quintilian—*se tenebras offudisse iudicibus in causa Cluenti.*

IV. On the occasional Colloquialism of Cicero's style.

So much has been said about the place of Cicero in the history of Roman literature, and his services to Latin prose, as sponsor for much of its vocabulary, and perfecter, if not creator, of the 'period' after the best models of Greek prose writing, that nowadays it is scarcely possible for labourers in the same field of inquiry to add anything substantial to what is already known. Leaving therefore the larger portions of the subject on one side, we propose to call attention to a single element in the composition of this rich and diversified style, hitherto perhaps insufficiently noticed. Our examples will necessarily be taken mainly from the *Cluentiana*: a larger induction might yield a more conclusive result.

To say that Cicero is sometimes *colloquial* is not to accuse him of provincialism, of anything such as the 'Patavinity' must have been which the ancients found in Livy. Cornificius[1] defines 'Latinitas' as that 'quae sermonem purum conservat ab omni *vitio* remotum': and such faults he classifies as 'solecism and barbarism.' The educated society of Rome were doubtless incapable of either. Their speech, though conversational, was good Latin still: it was not the 'sermo plebeius' of the Subura. We may judge this from the pure and correct Latinity of Cicero's correspondents; it may be much inferior to his in brilliancy and delicacy, but in other respects the inferiority is slight. Doubtless the orator himself fixed a high standard of pure Latin for the society in which he moved, nevertheless we ought not absolutely to deny that his contemporaries exerted any reflex action upon him.

Thus we are merely asserting that there are certain conversational words, phrases, constructions, which, while they are perfectly good Latin, might by a purist be considered inappropriate in elevated and serious writing, and that Cicero does not scruple sometimes to adopt these in his oratorical style.

Professor Tyrrell has pointed out[2] that there are frequent correspondences between the language of familiar letter-writing and that of familiar dialogue. There are also occasional correspondences between the languages of both and the language of public speeches.

We may classify our examples under three heads: (*a*) fresh meanings of words; (*b*) special forms and uses of words; (*c*) constructions and turns of expression.

(*a*) Fresh meanings—

(1) *Postulo*, ἀξιόω, 'to expect': § 66 of this speech, cupidiore quam fides iudicis postulabat. Cp. *Planc.* § 57. Common in Comic poets: Pl. *Tr.* 237, nunquam amor quemquam nisi cupidum hominem | postulat se in plagas conicere.

(2) Indignum esse *facinus*, § 145 note, 'a monstrous *thing*': Plautus only: Cic. has it also, *ad Att.* ii. 13.

(3) *exclusus*, 'shunned,' § 175 note. Also in Hor. *Serm.* ii. 3. 260, amator | exclusus qui distat.

(4) Possibly the ironical *credo*, so common in Cic. Cp. Pl. *Capt.* 960.

[1] *Ad Herenn.* iv. 12.

[2] *Correspondence of Cic.*, Introd. § 2.

(5) Sic hominem *accipiemus*, § 163, 'treat': v. L. and Sh. *accipio* (i. c. α): thus used, with adverbs in Comic poets and Lucilius, *e.g.* Pl. *Aul.* 622.
(6) *Adfinis* with dat. 'a party to,' § 127 note: Com. poets. Liv. has *a. noxae* once.
(7) *Nullus* esse, probably: § 77 note: 'to be obliterated.'
(8) The legal phrases *elogium*, *logus*, and *dica* are used only by the Lawyers, Com. poets, and Cic.

We may add to these Cicero's partiality for diminutives, and that not only in the Letters. V. Index for exx.

(*b*) Special forms and uses of words:—

(1) *Fortassis* for fortasse, § 144 crit. note.
(2) *Senati*, gen. case, *div. in Caec.* § 19 (Kays.). Cp. victi, *Capt.* 849, sumpti, *Tr.* 250, etc.
(3) *Miltiadi*, etc., from Greek nouns ending in -ης: according to Madv. *de Fin.* i. § 14, the only form of such genitives in Cic. So Philocrati, etc., in Plaut.
(4) Use of comparative and superlative degree of participial adjectives: such as *notior*, *notissimus*, *apparatissimus*, *accommodatior*, *-issimus*, *exploratior* and *accuratissimus* (in *Epp. ad Att.*). Com. poets have *factius*, *occlusior*, *ecfertissimus*, and many others. Other writers have scarcely any, except *auctior*, *emendatior*, *accuratior*.
(5) *Amplexo*, § 124 crit. n. Such forms are a relic of the older language, surviving mainly in popular speech.
(6) *Inermus*, § 25 crit. n.: a similar survival.
(7) *Nostrorum*, probably: gen. plur.; § 194 crit. n.
(8) *Quicquid*, for *quicque*: § 52 notes.
(9) *Nihil quicquam*, a strong *nihil*. Common in Com. poets; occurs even in Cic. *de Orat.* i. § 134.

(*c*) Constructions. These are mostly explained in the notes too fully to require more than a mention here:—

(1) The imperf. and pluperf. subj. *jussive*: as *restitisses*, 'you ought to have resisted.'
(2) The rare gerund-construction of *Phil.* v. § 6, facultas agrorum suis latronibus condonandi; Pl. *Capt.* iv. 2. 72, nominandi istorum copia. V. Madv. *de Fin.* i. § 60. Found only in Plaut., Ter., Lucr., Varr., the archaistic Gellius, and Fronto, besides Cic.

(3) The omission of the pronoun subject before the infinitive after verbs of saying and thinking: Pl. *Capt.* 253, cum cavisse ratus est.
(4) *Factum esse oportuit*, *factum oportuit*, § 129 note.
(5) The frequent use of *cum* with indic. in past time, § 83 note.
(6) The use of pronominal subject with the infin. after *volo*: Pl. *Merc.* 150, vin tu te mi esse obsequentem an nevis?: and frequently in Plaut. So *Catil.* iii. § 25, non illi hanc urbem conflagrare sed se in hac urbe florere voluerant. So § 152 of this speech, note. Compare ex. from Pl. *Tr.* quoted above (*a*, 1).
(7) *Potest* impersonal: § 154, quoniam id non posset; an ellipse of *fieri* ought perhaps to be supposed, in Com. poets and Cic. alike.
(8) *Lucri facere*, 'to count as gain,' Cic. *Verr.* ii. 3. 116; this and similar genitives (compendi, praemii) are common in Latin dialogue.
(10) The use of *ni* = *si non*: § 10 note.
(11) *Facio* with dat. or abl. of person, 'to do something with': almost confined to Cic. and Com. poets. But again we find the same use in Hor. *Serm.* i. 1. 63, quid facias illi? Cp. notes on §§ 53, 186.
(12) *Quia* instead of *quod* after verbs of the affections (doleo gaudeo suscenseo) is common in Plaut., *e.g.* lacrimas mi haec eliciunt, quia . . ., *Tr.* 290. Cic. has it sometimes: *Sull.* § 50, reprehendis me quia defendam. In late Lat. *quia* came to be used after verbs of saying and thinking, in place of the infin. (Lact. 4. 12. 18, scis quia ego sum dominus Deus).
(13) The use of *cum* with indic. after *laudo* and *gratulor*: *Mil.* § 99; *ad Fam.* xiii. 24, gratias ago cum tantum litterae meae potuerunt. V. Madv. *de Fin.* i. § 10 for parallel exx. from Com. poets. It is an older construction than that of *quod*, commonly used.
(14) *Nihil* tam remotum ab accusatione quam Cluentius, § 42: v. note.

These examples will illustrate the principle which it is sought to establish. Something must of course be discounted for Cicero's intimate acquaintance with the earlier literature of his country, especially with the Comedians. When we find an identity of expression, such as that between 'in pauca

confer' (Pl. *Poen.* 1222) and 'ut in pauca conferam' (*Caec.* § 17), we shall be inclined to account it a case of more or less conscious borrowing on the part of the later writer. But in numerous instances this will not apply; and we shall prefer to believe that Cicero, purist as he was, was far removed from pedantry and conventionalism. The occasional colloquialism of his diction is due not to a careless habit of composition, but to the sincerity and living energy of his style. Unlike the rhetoricians of a later day, he was in touch with the people: their speech at its best was his.

V. Genealogical Tables connecting the Chief Personages in the story.

Note.—* denotes 'married to Oppianicus.'
† denotes 'murdered by Oppianicus.'

A.—Family of Cluentius.

(CLUENTIUS.)

- **A. Cluentius Habitus**, pater. (*a*) *m.* *Sassia.
  - **Cluentia.** (*c*) *m.* †A. Aurius Melinus.
    - †**L. Aurius.** (?) (*e*)
    - **Num. Cluentius.** (?) (*f*)
  - **A. Cluentius Habitus.** (*d*)
- †***Cluentia.** (*b*)

Notes on the persons.

(*a*) A distinguished citizen of Larinum; died in consulship of Sulla and Pompeius, B.C. 88, § 11.

(*b*) V. § 30 for an account of her death.

(*c*) She was grown up (*grandis et nubilis*) at the time of her father's death, soon after which she married A. Aurius Melinus, her first cousin on the mother's side; two years after was suddenly divorced by her husband, who married Sassia. It is probable that L. Aurius was the issue of this and not an earlier marriage of A. Aurius Melinus (v. § 23 n.). In § 165 we find Num. Cluentius called the son of Cluentius' sister; it may be conjectured that he was a son of this marriage, born after the divorce. After the separation, Cluentia probably lived with her brother, §§ 11-14.

(*d*) The defendant: a Roman knight. Fifteen years of age in B.C. 88 (§ 11): therefore twenty-nine at the time of Oppianicus' trial, and thirty-seven at the time of the present trial.

It is interesting to find that Vergil honours the gens Cluentia (along with the gens Sergia) by finding it an ancestor among the Aeneadae—

Scyllaque Cloanthus
Caerulea, genus unde tibi, Romane Cluenti,—

and also that a Samnite general, L. Cluentius, commanded in the Soci a War. V. Momms. *R.H.* iii. 252.

(*e*) Proscribed at Larinum, owing to Oppianicus, § 25; cp. n. on § 23.

(*f*) V. n. on § 165.

B.—Family of Dinaea.

(Aurius.)=†DINAEA. (α)=(Magius.)

| † M. Aurius. (β) | Num. Aurius. (γ) | Cn. Magius. (δ) *m.* *Papia. (?) (ε) | *Magia. (ζ) |

[Related to the Aurii were—
i. † **A. Aurius.**
ii. † **A. Aurius Melinus** and his son † **L. Aurius.**
iii. † **Auria**, wife of C. Oppianicus.]

Notes on the persons.

(α) Dinaea, a rich old lady of Larinum, survived three of her children, Num. Aurius, Magia, Cn. Magius. Already a heavy blow had fallen on her,—the disappearance of her son M. Aurius in the Social War. News came to her that he was alive just before her fatal illness: and she left 400,000 sesterces by will to him, but the bulk of the property to young Oppianicus (§§ 21, 22). This illness is attributed, in § 40, to poison administered by L. Clodius, a quack doctor introduced to her by Oppianicus. She died about the time of Sulla's victory, B.C. 82.

(β) Taken prisoner in the Social War at Asculum, enslaved, and thus for years lost to his family. At last news came that he was in the hands of Q. Sergius, a senator. This was just before his mother's death. Friends proceeded to the Ager Gallicus to ransom him. Oppianicus used bribery to delay the accomplishment of their purpose. Finally he had M. Aurius assassinated, doing all this that the whole property of Dinaea might pass to his own son, §§ 21, 23, 24: 'avunculum filii sui,' § 125.

(γ) Died after the disappearance of M. Aurius, for he made his half-brother Cn. Magius his heir.

(δ) Died third of the family, leaving his property to be divided between Dinaea and Oppianicus the younger, son of his sister Magia (§ 21). But we read in §§ 33, 34, that he left his wife, who was expecting her confinement, a legacy payable through a posthumous son and heir, if such were born. This precaution against the intrigues of Oppianicus was unavailing, §§ 34, 35. The reversionary heir, Oppianicus minor, got the whole property eventually.

(ε) v. VII. '**Wives of Oppianicus**,' 3.

(ζ) Died second of the family of Dinaea, after Num. Aurius: probably about B.C. 87; v. 'Wives of Opp.'

The expression in § 40, quo curante suos omnes (Dinaea) perdidisset, is not to be pressed into a direct charge of poisoning against Oppianicus.

When Cn. Magius was making his will, he showed some suspicion of Oppianicus (§ 34): that is all that is alleged against him with regard to the family of Dinaea up to the time of her death.

For (i) v. n. on § 23.

(ii) Sister's son of Sassia: married Cluentia (*c*) [v. *supr.*]: divorced her in two years, and married his aunt and mother-in-law Sassia. Proscribed and put to death by Oppianicus in Sulla's name.

L. Aurius, his son, probably by Cluentia; put to death at the same time, § 25.

(iii) Poisoned, when pregnant, by Oppianicus her brother-in-law, § 31.

C.—Family of Oppianicus.

(OPPIANICUS.)

Statius Albius Oppianicus. (α)
m. 1. Cluentia. 2. Magia. 3. Papia. 4. Novia. 5. Sassia.

Oppianicus filius. (γ) *m.* Auria. (son of Magia)
† **Son.** (son of Papia)
† **Son.** (son of Novia)

† **C. Oppianicus.** (β)
m. † **Auria.**

Notes on the persons.

(α) A Roman knight, of distinction in his own town (§ 109). Convicted of attempt to poison Cluentius, B.C. 74; died B.C. 72. Cluentius is accused of having poisoned him.

(β) Poisoned by his brother, after his wife Auria. He discovered the facts too late to be able to change his will.

(γ) The prosecutor: a young man of about 24 years of age, married to the daughter of Sassia, and, if we are to believe Cic., completely dominated by his mother-in-law.

D.—Family of Sassia.

*SASSIA . . . . A sister = (Aurius).
m.
1. A. Cluentius Habitus pater. 2. A. Aurius Melinus. 3. Oppianicus pater.

Children of 1: **Cluentia.** **A. Cluentius Habitus.**

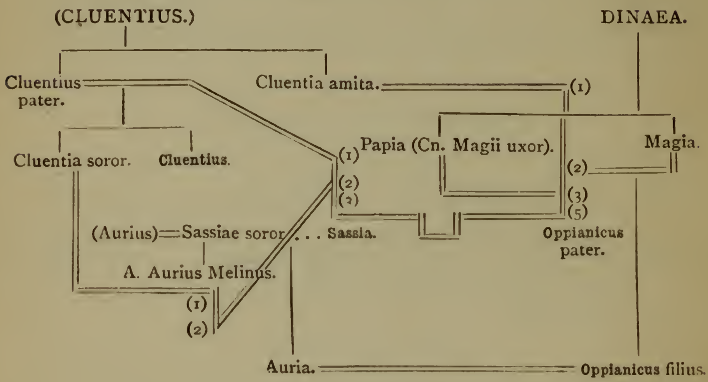
Child of 2: **Auria** = Oppianicus filius.

Son of the sister: **A. Aurius Melinus.**

Sassia, 'uxor generi, noverca filii, filiae pelex,' § 199. Her obstinate hatred towards her son Cluentius is at the back of the whole trial. But should not something be allowed for fidelity to what she considered her husband's cause? The intrigue with Sex. Albius the farmer (§ 175) looks like mere scandal.

E.—The Relationship between the Chief Actors in the story.

(Double lines indicate marriages; numbers on the vertical lines the order of the marriages of Aurius, Sassia, Oppianicus.)



VI. The Crimes of Oppianicus

are rapidly enumerated in § 125. A list of them here may be useful.

1. He poisoned his first wife Cluentia, § 30.
2. He poisoned Auria, wife of his brother C. Oppianicus, while she was pregnant: a double murder, § 31.
3. He poisoned his brother C. Oppianicus: by this and the previous crime securing his inheritance for himself, § 31.
4. He induced Papia, the widow of his brother-in-law Cn. Magius, to procure abortion after her husband's death, married her, and thus secured his inheritance, §§ 34, 35.
5. He poisoned his mother-in-law Dinaea, and through his son Oppianicus gained possession of her property, after tampering with her will, §§ 22, 40, 41.
6. He had M. Aurius, her son, his brother-in-law, murdered, in order that he might gain the whole property of Dinaea, § 23.
7. He had A. Aurius, a kinsman of the Aurii (sons of Dinaea), A. Aurius Melinus, L. Aurius son of the latter, and

one Sex. Vibius, proscribed and put to death at Larinum. This was because he was threatened with proceedings on account of the last-mentioned murder, § 25.

8. He murdered two of his sons, by Papia and Novia respectively, because Sassia refused to become the stepmother to three children.

9. At some time before this he instigated one of his creatures, a certain Avillius, to murder a rich and dissolute young man, Asuvius of Larinum, having previously forged his will. He was arrested by Manlius, the triumvir, and only escaped by bribing this worthless magistrate to abandon the case.

10. The council of Larinum declared him guilty of falsifying the municipal records, § 41.

11. Lastly, he made an attempt on the life of Cluentius, for which he was ultimately brought to justice, and convicted of an attempt to poison.

VII. The Wives of Oppianicus.

Oppianicus was married at least five times. There is no single statement in the speech either as to the number of his wives, or as to the order of their succession. But the following list is pretty certainly correct:—

1. Cluentia, sister of Cluentius the elder; she takes precedence of the rest, as belonging to an earlier generation.

2. Magia, daughter of Dinaea, by whom he had a son, Oppianicus the younger.

3. Papia, who was living at Teanum Apulum, evidently divorced from her husband, with her young son, whom Oppianicus sent for and murdered just before his marriage with Sassia (§§ 27, 28). She is to be identified with the widow of Cn. Magius, who had lent herself to his evil purposes and married him, 'quae nuptiae non diuturnae fuerunt : erant enim non matrimonii dignitate, sed sceleris societate coniunctae,' § 35,—words which suggest divorce rather than decease.

4. Novia, whose infant son Oppianicus murdered within ten days of the murder of his son by Papia. We may suppose that if Novia had then been alive, but divorced, Cic. would have enlarged upon her maternal grief.

5. Sassia, widow of A. Aurius Melinus and of A. Cluentius Habitus the elder.

A sixth wife can be supposed, if we distinguish the unnamed widow of Cn. Magius from Papia, as Prof. Ramsay does. The story seems sensational enough without this. Others have identified the widow of Magius with Novia.

If Papia is rightly identified thus, of course she follows Magia (sister of Cn. Magius) in order of marriage. The relative ages of their sons adapts itself to this view. In B.C. 72 the younger Oppianicus, son of Magia, was still 'puer' (§ 176) when his father died: he married in B.C. 69: we must thus suppose him to have been born about B.C. 90-87. Papia's son was a child at school when Oppianicus sent for him in B.C. 82: thus he was perhaps born at some time within the years B.C. 85-87. There is room for one other marriage and burial (or divorce) before the year B.C. 82, that of Novia: but scarcely, one would think, for more than that one. It is noteworthy that Cluentia is the only wife whom Oppianicus is accused of having murdered: the plural *uxores* in § 125 and elsewhere is rhetorical.

VIII. Table of Dates.

B.C.

106. Birth of Cicero.
103. Cluentius the younger born.
91. Reform-proposals of M. Livius Drusus.
Varian quaestio (in the interest of the Equites) on the followers of Drusus.
91-88. Social War.
88. Coss. L. Cornelius Sulla, Q. Pompeius Rufus. First Mithradatic War begun. Elder Cluentius died.
90, 87. At some time between these dates Oppianicus the younger was born.
87. (probably) Cluentia married A. Aurius Melinus.
86. Cluentia divorced: Sassia marries A. Aurius Melinus.
83. Sulla lands in Italy.
82. (probably) Dinaea died.
A. Aurius Melinus and others proscribed through Oppianicus.
Sassia marries Oppianicus.
81. The *leges Corneliae* of Sulla: *iudicia* restored to the senate.
Cicero's speech *pro Quinctio*.
80. Cicero's speech *pro Sex. Roscio Amerino*.
79. Sulla abdicates the dictatorship.
74. Cluentius accuses Oppianicus of attempting to poison him: C. Junius presides at the trial.
74 70. Agitation of tribune L. Quinctius against senatorial juries.
72. Death of Oppianicus the elder.

B.C.

70. Coss. M. Licinius Crassus, Cn. Pompeius Magnus: Sulla's constitution overthrown.
Lex Aurelia iudiciaria divides iudicia between senators, knights, and *tribuni aerarii.*
Censors L. Gellius, Cn. Lentulus.
Cicero's speeches against Verres.

69. Coss. Q. Hortensius, Q. Caecilius Metellus.
Oppianicus the younger marries Auria, daughter of Sassia.
Cicero's speeches *pro Caecina*, *pro Fonteio.*

66. Coss. M'. Aemilius Lepidus, L. Volcatius Tullus.
Cicero praetor: his speeches *de imperio Cn. Pompeii* in favour of the Manilian law, and *pro Cluentio.*

ANALYSIS.

By J. A. Hamilton.

EXORDIUM.

Ch. I. (§ 1) The speech for the prosecution was in two parts; the first resting on the prejudice about Oppianicus' trial; the second dealing with the nature of charges of poisoning.

(§ 2) I shall follow the same order, treating the second head shortly, but the first, which is fitter for a 'contio' than a trial, at length. (§§ 3, 4) But I rely on you, gentlemen; as to the prejudice, I know you are men
II. of the world, and (§§ 5, 6) you will give me a fair hearing.

III. (§§ 7, 8) It is hard to have lain under this prejudice eight years, but a fair trial is a safeguard, and I hope it will end here, if you will deal with it impartially.

I.

IV. (§ 9) The source of all the prejudice is the charge that Cluentius bought a verdict of Guilty against Oppianicus. I shall show (*a*) that his guilt was clear, (*b*) that the jury was bound to convict, (*c*) that the bribery took place on Oppianicus' side, not Cluentius'.

A.—OPPIANICUS' CRIMES.

(§ 10) What were Oppianicus' crimes? (§ 11) Cluentius prosecuted not from a mere desire to figure as a prosecutor, but because he was driven to do so by infamous wrongs. I must be detailed.

V. Cluentius the elder died 88 B.C., leaving my client, then fifteen years old, and a daughter, who shortly after married A. Aurius Melinus, her first cousin (§ 12). But Sassia, her mother, became enamoured of Melinus (§ 13), and pursued him with her passion. The daughter confided her trouble to Cluentius (§ 14). Melinus suddenly divorced his wife and married Sassia (§ 15).

CH. VI. There was a scandal which grieved Cluentius, but (§ 16) he could only disown Sassia.

(§ 17) It grieves me that his defence should be an attack on his mother ; but from this sprang a feud between them, (§ 18) and she has been at the bottom of all his troubles ever since, and is now maintaining this prosecution. Silence about her is impossible.

VII. (§ 19) Let me take one by one the grounds of Oppianicus' conviction. First, Cluentius was driven to prosecute (§ 20) by an attempt on his own life by poison. The case was so clear that Oppianicus had need of Staienus help. (§§ 21, 22) Dinaea, whose daughter married Oppianicus, and bore him the present prosecutor, young Oppianicus, left a will, of which the latter was *heres:* a son, who was then a slave in Gaul after the Social War, was to have a legacy of 400,000 sesterces,
VIII. should he be discovered. (§ 23) But Oppianicus, the father, got M. Aurius put out of the way, and suborned the person who had informed Dinaea of her son's being still alive, to conceal his whereabouts. (§ 24) A. Aurius of the same family charging him with these two crimes, he fled to Q. Metellus' camp, and afterwards (§ 25) returning in Sulla's time to Larinum, made himself and three others municipes, and put to death A. Aurius, Sassia's husband, Aurius Melinus, a son of A. Aurius, and a tool of his own in his former crime, Sex. Vibius.

IX. (§ 26) Next he fell in love with Sassia, and as her objection to him was that he had three sons, (§ 27) he summoned home from a distance one by a divorced wife, whereon the boy shortly died under suspicious circumstances, and then (§ 28) he murdered the second [the third, young Oppianicus, as Dinaea's *heres*, was worth preserving] and married Sassia.

X. (§ 29) Judge by your own indignation now, what must have been the feelings of the jury when he was tried. Conviction was certain, and bribery needless.

(§ 30) But more: he murdered his wife Cluentia, my client's aunt, Auria his brother Caius' wife, at a time when she was with child, and then his brother himself.

XII. (§§ 33, 34) On his deathbed his brother-in-law, Cn. Magius, had left money to the child of which his

wife then was pregnant, and a sum to her only in the event of the child's birth. Mark his suspicions of Oppianicus. But he was too short-sighted. Oppianicus bribed her to procure abortion, and the whole inheritance fell under the will to Oppianicus the younger.

Ch. XIII. (§ 36) By the help of Avillius, a sharper, he decoyed Asuvius, a rich youth of Larinum, to Rome, and had him murdered at the Esquiline gate; Avillius having previously duly executed a will under Asuvius' name. (§ 38) Avillius was taken before Q. Manlius, then triumvir, and confessed all, but (§ 39) Oppianicus when arrested bribed Manlius.

XIV. (§ 40) He then procured L. Clodius, a quack of Ancona, to poison Dinaea and (§ 41) forged a will in her name. He even tampered with the archives of Larinum. He was universally hated, yet Cluentius would have left him unassailed, but (§ 42) after the attempt on his own life he had no choice.

B.—Plot against Cluentius.

XV. (§§ 43, 44) It happened thus: Oppianicus declaring certain priests of Mars at Larinum to be Roman citizens, the Larinates prevailed on Cluentius to appear against him for them at Rome. Hence he came into collision with Oppianicus. Besides, he had made no will, and Oppianicus designed to kill him, so that Sassia should inherit his property, and thereafter to

XVI. kill Sassia. (§ 46) He had two friends, rogues of Larinum, the Fabricii. (§ 47) Cleophantus, a doctor then attending Cluentius, had a slave Diogenes. Oppianicus set C. Fabricius on to corrupt this slave. He revealed it to his master, and after consultation with Cluentius and Baebius, a senator, a trap was laid. Cluentius bought Diogenes, and poison was seized in the hands of Scamander, a freedman of Fabricius.

XVII. (§ 48) With guilt so plain, how can Oppianicus' conviction be called corrupt, or Cluentius be said to have prosecuted otherwise than perforce? (§§ 49 and 50) Scamander was tried first; pressed by friends of Fabricius

XIX. from Alatrium, I undertook the defence, (§ 51) a most difficult task. (§§ 51-54) I did my best, but I had no case. I could make no way, and throughout it was

as much Oppianicus' guilt as Scamander's that was

Ch. XX. at issue. (§ 55) On Oppianicus' advice, Scamander asked that the jury might retire. On the first day's pleading he was convicted by every vote but one, and that one was Staienus' own.

XXI. (§ 56) Next, Cluentius prosecuted Fabricius. (§ 57) The brothers Caepasii defended and (§ 58) Cannutius prosecuted; but the case was so bad that they seemed to be playing into his hands. The jury laughed at them.

C.—Oppianicus' Trial.

XXII. The same jury tried Oppianicus; how could they acquit him and convict his tools? (§ 62) The prosecution did not need to bribe; (§ 63) bribery there was; but by him who risked most, and was twice convicted already. (§ 64) Either Cluentius or Oppianicus bribed, but only one. That one was Oppianicus; (§ 65) beyond doubt he employed Staienus. First on Scamander's trial, when Staienus alone acquitted; (§ 67) on Fabricius' trial even he could not acquit. So on the next trial stronger measures were needed.

(§ 68) Two years before, Staienus had taken money to bribe jurors in Atella's case and embezzled it. Now, being ready for more, he told Oppianicus (§ 69) that he alone would manage the affair, and received £5000.

XXVI. Then, seeing nothing could suit him better than to pocket it, and let Oppianicus be condemned, being needy and greedy, (§ 70) he made this plan. (§ 71) To the unprincipled he promised bribes (the rest needed no incensing), namely, to Bulbus and Gutta, and then, saying Oppianicus had thrown them over, incensed them against his employer.

XXVII. (§ 73) Rumours of corruption were afloat, and Cannutius decided to take a verdict before matters went further. Oppianicus thought Staienus had bought the sixteen votes needed. (§ 74) So suddenly did the case close that Staienus chanced to be arguing elsewhere. Cluentius and Cannutius did not object to his absence, but Oppianicus and L. Quinctius, then Tr. Plebis, did; and the latter went out and fetched him in to vote. (§ 75) Oppianicus called for public voting so as to make his jurors earn their money. The upright looked at the corrupt to see which way they

CH. XXVIII. were bribed. Bulbus, Staienus, and Gutta convicted.
(§ 76) There was some hesitation among the jurors
owing to the rumoured corruption, but a conviction
was obtained, only five voting Not Guilty.
(§ 77) Quinctius made recent unpopular verdicts the text
for an agitation against the senate. (§ 78) Then
XXIX. Staienus was compelled to confess and disgorge. Pre-
judice was kindled. Men thought it was the conviction
that was bought; (§ 79) they knew nothing of Oppi-
anicus, and were inflamed by Quinctius. C. Junius,
who presided, though on the verge of the praetorship,
was driven from public life. (§ 80) I am glad the
storm is a little blown over now, for then Cluentius
XXX. could not have got a hearing. (§ 81) In fact he did
not bribe; (§ 82) it has never been traced in his
books. It was Oppianicus who objected to Staienus'
absence at the vote; (§ 83) and then compare the
XXXI. characters of the men. (§§ 84-86) It is suggested
that Oppianicus gave Staienus the money to appease
Cluentius. But peace in the abandonment of the
prosecution, or Oppianicus' safety, was impossible.
It was a lie of Staienus', invented at a time when any
lie was better than truth, and probably was prompted
XXXII. by Cethegus. (§ 87) They suggest also it was to
bribe Cluentius to betray the prosecution. But
why employ a juror and a man like Staienus? The
sum 640,000 shows it was to bribe sixteen jurors with.

D.—Alleged other Convictions of Cluentius.

(§ 88) Further, it is said Cluentius' bribery has often been
judicially derided. Absurd; it never was tried be-
fore. These 'trials' were storms, not trials; some
make for Cluentius; some did not make against him;
some never were dubbed trials before.
XXXIII. *1st*, C. Junius' condemnation was due to passing pre-
judice; (§ 90) Quinctius indecently pressed it on.
And what he was fined for was irregularity in his
appointment, which was the fault of Verres; (§ 92)
XXXIV. it does not touch Cluentius, and was no fair trial.
(§ 94) How much better a precedent was Faustus
Sulla's case, which was postponed to secure a fair
XXXV. hearing. (§ 95) Quinctius' influence bore down
everything; the power of that office, the cases of P.

Popilius and Q. Metellus, show: (§ 96) it was no trial, but mere violence, and is not a judgment against Cluentius.

(§ 97) 2*d*, Bulbus' conviction. That was for *maiestas*, not for his conduct in Oppianicus' case. Though that was brought up against him there was plenty to convict him for without it.

CH. XXXVI. (§ 98) 3*d*, Popilius and Gutta: But they were convicted *de ambitu*.

(§ 99) 4*th*, Staienus: If his crime was not *maiestas* (§ 100) his defence was that he got the money for Cluentius, and it was laughed out of court. He was proved to live by bribery. (§ 101) No; the bribery was brought home to Oppianicus, so Cluentius must XXXVII. be innocent. (§ 103) Junius' conviction was procured by violence, and the other cases make for us.

5*th*, Case of Falcula, who was a juror at the trial. He was twice tried: 1st, for informality in his appointment, and acquitted; (§ 104) but I waive that; 2d, he was tried *de repetundis*, and acquitted after a fair trial.

XXXVIII. (§§ 105-106) Now, though the votes of those who acquitted Oppianicus, however inconsistent, are excusable, (§ 107) we find among those who did *not* acquit, Octavius Balbus, Considius, Pedo, Mergus, Bas- XXXIX. ilus, Caudinus, Cassius, Heius, Saturius. Herein lay the difference between Junius' and Falcula's trial, that in the former Quinctius prevented any defence: and then on quitting office abandoned his agitation.

(§ 109) You remember him. It all grew out of his vexation at not getting Oppianicus off, as if having him for an advocate was not most significant. (§§ 110 XL. and 111) He never defended a case before, and was a mere demagogue, an unbridled ambitious XLI. *roturier*. (§ 113) Falcula's acquittal at any rate demolishes the argument of the prosecution: for he, if any man, was bribed; he convicted; he had not sat out the case; so that either those who rely on these trials must impeach them or admit that Oppianicus' trial was a fair one; (§ 114) but why were the other jurors never put on their trial, and why were those who were tried, not tried on this charge directly?

6*th*, Scaevola's Litis Aestimatio (§ 115), it is said, indirectly found as a fact that Oppianicus' trial was corrupt. But it is a very informal proceeding: a jury often disregards its own Litis Aestimatio: and there were plenty of other reasons for Scaevola's conviction. He never was tried on this charge.

CH. XLII. (§ 117) 7*th*, The authority of the Censors. That is no iudicium at all. (§ 118) I say nothing against him, but it is not a judicial act. I owe that criticism to my client, and they would admit its truth. (§ 119) So that the censure of some of that jury counts for nothing: why, C. Geta became censor after having
XLIII. himself been censured! No infamy follows it, so it can be no judgment. Anxious as our fathers were for the purity of juries, they never made this a disqualification. (§ 121) Juries disregard it: so do praetors in choosing a jury panel: censors disregard their predecessors' 'subscriptio,' and even disagree
XLIV. between themselves. (§ 123) To treat censure for a charge as proof of the truth of the charge would be to arm the censors with tyrannous power.

§ 124. So their censure is irrelevant, and we get back as before to the original facts. Nothing is proved against Cluentius: (§ 125) you hear Oppianicus'
XLV. crimes. The censors (§ 126) themselves would admit they followed mere rumour: their decision can be questioned, as I successfully questioned it in Matrinius' case. (§ 127) Besides, why were Aquilius and
XLVI. Gutta alone censured? (§ 128). There is no analogy to decimation, (§ 129) a censor should censure all
XLVII. who are guilty. (§ 130) But they follow rumour; and there were other judicial scandals then: they seized on men they knew to be rogues. (§ 131) But they heard no defence: Gellius the censor could know nothing of Oppianicus, and (§ 132) as to Popilius, Lentulus disagreed.

XLVIII. (§ 133) It is said they censured Cluentius himself: that was owing to current scandal. (§ 134) They should have followed Africanus' example in the case of Licinius Sacerdos.

(§ 135) 8*th*, There is Egnatius' will, disinheriting his son for corruption on Oppianicus' trial: a very foolish

will. Besides, Egnatius was ejected from the senate, but his son was not.

CH. XLIX. (§§ 136, 137) 9*th*, There was a Senatus Consultum. Naturally under the circumstances there would be, but it named no one, and asserted nothing, and no law was passed in consequence of it.

L. Last, 10*th*, My own opinion in some speech. I merely quoted common rumour, (§ 139) I did not know the facts. It was an advocate's speech, and no judgment. (§ 140) Speeches should not be quoted in

LI. this sense. (§ 141) I may cite the conduct of L. Crassus when attacked by M. Brutus. (§ 142) The speech was a good piece of advocacy then. Now I am better informed.

II.

LII. 143. You were wrong, Accius, in thinking I should only rely on a technical defence. (§ 144) I do not abandon it, but by Cluentius' desire, expressed in consultation, I am to rely on the merits, and a very good defence they afford. It would have been

LIII. enough to have cited the Lex. (§ 146) Law is the state's life : this court (§ 147), and all we who preside in *quaestiones*, are bound by the law, and any one may without shame avail himself of the law's pro-

LIV. tection. You, Accius, dare to argue that such a defence is base. (§§ 148, 149) But Cluentius clearly is not within the Lex, and is entitled to rely on it, and though he waives it, I must and will

LV. meet your argument. (§ 150) Base or not, it is the law. Rank has its penalties ; the highest ordo has a stricter law. (§ 151) C. Gracchus first enacted this law, not against, but to protect, the people. Sulla dared not extend it to the knights, though he hated them, and (§ 152) few now wish to do so, and those are men who would make the equites' judgments

LVI. no longer independent. How nobly Pusio, Titinius, and Maecenas in Drusus' time expressed the equites'

LVII. position. (§§ 156, 157) Cluentius waives his legal right, but otherwise I should rely on it. I must stand up for the law. If Accius' appeal to you, to bring all alike within it, should stand, who of the meanest would be safe ? (§ 158) In any other man's

CH. LVIII. case I would have pressed the point, and you would have accepted my view. (§§ 159, 160) The law binds you, and if Accius had thought a little, he would not have suggested the contrary.

III.

LIX. Now I deal with the substantial charges, for out of mere shame they had to urge some besides mere prejudice. (§ 161) (*a*) It is said Cluentius' slaves attacked Decidius: why, Cluentius was most generous to him! (*b*) that they attacked the shepherds of Pacenus and Ancharius: it was a mere squabble; (§ 162) (*c*) that he was Aelius' *heres*, to the exclusion of a nearer relative —a high tribute to Cluentius' merit! he had nothing to do with making the will; (*d*) that he disputed a legacy to Florus: nay, but he was at once cautious and liberal. Ceius too he treated generously. (§ 163) Ennius' case is trumped up: I hear his charge of assault is due to your subornation. I will handle

LX. him in his turn. (§ 164) And this is all they could rake up in eight years!

(§ 165) And now we come to the real charge in the case, that of poisoning, 1st, Vibius Cappadox: that is easily disproved; and, 2d, (§ 166) young Oppianicus, (§ 167) a crime foreign to Cluentius' whole career: improbable in detail, and without motive. (§ 168) Besides, the suggested victim Balbutius did not die as described at all, but after an illness of some days. [Father's Deposition read.]

LXI. (§ 169) This last charge shows that it is the implacable Sassia who is at the bottom of it all. The charge of poisoning Oppianicus the elder through M. Asellius is (§ 170) without any motive, either of fear or gain. Hatred would have prompted him to leave his enemy alive in his misery; (§ 171) death, unless we believe fables about Hades, would have been a blessing;

LXII. (§ 172) and what connection had he with Asellius? Asellius was his foe and Oppianicus' friend. Why was he not prosecuted too? (§ 173) The mode of giving the poison is very unlikely, and Oppianicus (§§ 174 and 175) did not die suddenly, in fact, but of a fall from his horse while still an invalid.

LXIII. (§ 176) Sassia at once began to plot. She bought of

Rupilius, Oppianicus' doctor, his slave Strato, and put him with Ascla, a slave of her own, and Nicostratus, whom she compelled young Oppianicus to give up, to the torture. But respectable witnesses being there they confessed nothing, (§ 177) and on a second occasion her intent became plain, and the inquiry was closed. (§ 178) Sassia went in dudgeon to Larinum, and rewarded Strato, the supposed murderer of her husband, by setting him up as a doctor.

CH. LXIV. (§ 179) After three years, to secure young Oppianicus, she betrothed to him, against his will, her daughter by her own son-in-law: (§§ 180 and 181) and then, Strato being tried for a theft, she reopened the old charge, and tortured him and Nicostratus without (§ 182) any

LXV. independent witness. (§ 183) Accius did not say so, but can it be that during the inquiry about his theft Strato told about the poison? (§§ 184 and 185) No; the minutes do not bear it out. They say nothing of

LXVI. the theft. They are forged by Sassia. (§ 186) There was but one witness, and he is not called before you. (§ 187) Why was the inquiry held, then? why are not the slaves called now? Why, Strato has been crucified, with his tongue cut out!

(§ 188) What a monster must Sassia be! She was partner in all Oppianicus' crimes. (§ 190) To secure a pro-

LXVII. secutor for her son, she bound young Oppianicus to her by every tie. (§ 191) She trumped up the whole charge, (§ 192) and is now here to help the prosecu-

LXVIII. tion and exult over her son. All the way to Rome men flocked to see her pass, and to groan at her: (§ 193) they thought she polluted the road she trod; (§ 194) as she passed, no one would give her shelter. Her aim is to ruin her son, and she resorts even to magic.

PERORATION.

LXIX. (§ 195) Save Cluentius from his mother. All Larinum is here to aid him. (§ 196) They think the town itself is on its trial. [Laudationes read.] (§ 197) See their decurions here, with the Frentani, Marrucini, men of

LXX. Teanum Apulum and Luceria and others. L. Volusienus, Helvidius Rufus, Cn. Tudicius, all are anxious for him; (§§ 199, 200) protect him then against this

LXXI. infamous woman; (§ 201) be not swayed by prejudice: (§ 202) he has felt its weight long enough already.

PRO A. CLUENTIO ORATIO.

M. TULLII CICERONIS

PRO A. CLUENTIO HABITO

ORATIO AD IUDICES.

I. **1.** Animadverti, iudices, omnem accusatoris orationem in duas divisam esse partes, quarum altera mihi niti et magno opere confidere videbatur invidia iam inveterata iudicii Iuniani, altera tantum modo consuetudinis causa timide et diffidenter attingere rationem veneficii criminum, qua de re lege est haec quaestio constituta. Itaque mihi certum est hanc eandem distributionem invidiae et criminum sic in defensione servare, ut omnes intellegant nihil me nec subterfugere voluisse reticendo nec obscurare dicendo. **2.** Sed cum considero quo modo mihi in utraque re sit elaborandum, altera pars et ea, quae propria est iudicii vestri et legitimae veneficii quaestionis, per mihi brevis et non magnae in dicendo contentionis fore videtur, altera autem, quae procul ab iudicio remota est, quae contionibus seditiose concitatis accommodatior est quam tranquillis moderatisque iudiciis, perspicio quantum in agendo difficultatis et quantum laboris sit habitura. **3.** Sed in hac difficultate illa me res tamen, iudices, consolatur, quod vos de criminibus sic audire consuestis, ut eorum omnem dissolutionem ab oratore quaeratis, ut non existimetis plus vos ad salutem reo largiri oportere, quam quantum defensor purgandis criminibus consequi et dicendo probare potuerit: de invidia autem sic inter vos disceptare debetis, ut non quid dicatur a nobis, sed quid oporteat dici consideretis. Agitur enim in criminibus A.

Cluenti proprium periculum, in invidia causa communis. Quam ob rem alteram partem causae sic agemus, ut vos doceamus, alteram sic, ut oremus. In altera diligentia vestra nobis adiungenda est, in altera fides imploranda. Nemo est enim qui invidiae sine vestro ac sine talium virorum subsidio possit resistere. **4.** Equidem quod ad me attinet, quo me vertam nescio: negem fuisse illam infamiam iudicii corrupti? negem esse illam rem agitatam in contionibus, iactatam in iudiciis, commemoratam in senatu? evellam ex animis hominum tantam opinionem, tam penitus insitam, tam vetustam? Non est nostri ingenii: vestri auxilii est, iudices, huius innocentiae sic in hac calamitosa fama quasi in aliqua perniciosissima flamma atque in communi incendio subvenire.

II. **5.** Etenim sicut aliis in locis parum firmamenti et parum virium veritas habet, sic in hoc loco falsa invidia imbecilla esse debet: dominetur in contionibus, iaceat in iudiciis: valeat in opinionibus ac sermonibus imperitorum, ab ingeniis prudentium repudietur: vehementes habeat repentinos impetus, spatio interposito et causa cognita consenescat: denique illa definitio iudiciorum aequorum, quae nobis a maioribus tradita est, retineatur, ut [in iudiciis] et sine invidia culpa plectatur et sine culpa invidia ponatur. **6.** Quam ob rem a vobis, iudices, ante quam de ipsa causa dicere incipio, haec postulo: primum id, quod aequissimum est, ut ne quid huc praeiudicati adferatis (etenim non modo auctoritatem, sed etiam nomen iudicum amittemus, nisi hic ex ipsis causis iudicabimus ac si ad causas iudicia iam facta domo deferemus); deinde si quam opinionem iam vestris mentibus comprehendistis, si eam ratio convellet, si oratio labefactabit, si denique veritas extorquebit, ne repugnetis eamque animis vestris aut libentibus aut aequis remittatis; tum autem, cum ego una quaque de re dicam et diluam, ne ipsi, quae contraria sint, taciti cogitationi vestrae subiciatis,

sed ad extremum exspectetis meque meum dicendi ordinem servare patiamini: cum peroraro, tum, si quid erit praeteritum, [animo] requiratis.

III. 7. Ego me, iudices, ad eam causam accedere, quae iam per annos octo continuos ex contraria parte audiatur atque ipsa opinione hominum tacita prope convicta atque damnata sit, facile intellego: sed si qui mihi deus vestram ad me audiendum benevolentiam conciliarit, efficiam profecto, ut intellegatis nihil esse homini tam timendum quam invidiam, nihil innocenti suscepta invidia tam optandum quam aequum iudicium, quod in hoc uno denique falsae infamiae finis aliqui atque exitus reperiatur. Quam ob rem magna me spes tenet, si, quae sunt in causa, explicare atque omnia dicendo consequi potuero, hunc locum consessumque vestrum, quem illi horribilem A. Cluentio ac formidolosum fore putaverunt, eum tandem eius fortunae miserae multumque iactatae portum ac perfugium futurum. 8. Tametsi permulta sunt, quae mihi, ante quam de causa dico, de communibus invidiae periculis dicenda esse videantur, tamen, ne diutius oratione mea suspensa exspectatio vestra teneatur, adgrediar ad crimen cum illa deprecatione, iudices, qua mihi saepius utendum esse intellego, sic ut me audiatis, quasi hoc tempore haec causa primum dicatur, sicuti dicitur, non quasi saepe iam dicta et numquam probata sit. Hodierno enim die primum [veteris] ipsius criminis diluendi potestas est data, ante hoc tempus error in hac causa atque invidia versata est. Quam ob rem dum multorum annorum accusationi breviter dilucideque respondeo, quaeso, ut me, iudices, sicut facere instituistis, benigne attenteque audiatis.

IV. 9. Corrupisse dicitur A. Cluentius iudicium pecunia, quo inimicum innocentem Statium Albium condemnaret. Ostendam, iudices, primum, quoniam caput illius atrocitatis atque invidiae fuit, innocentem pecunia circumventum,

neminem umquam maioribus criminibus, gravioribus testibus esse in iudicium vocatum: deinde ea de eo praeiudicia esse facta ab ipsis iudicibus, a quibus condemnatus est, ut non modo ab isdem, sed ne ab aliis quidem ullis absolvi ullo modo posset. Cum haec docuero, tum illud ostendam, quod maxime requiri intellego, iudicium illud pecunia esse temptatum non a Cluentio, sed contra Cluentium, faciamque ut intellegatis in tota illa causa quid res ipsa tulerit, quid error adfinxerit, quid invidia conflarit.

10. Primum igitur illud est, ex quo intellegi possit, debuisse Cluentium magno opere causae confidere, quod certissimis criminibus et testibus fretus ad accusandum descenderit. Hoc loco faciendum mihi, iudices, est, ut vobis breviter illa, quibus Albius est condemnatus, crimina exponam. Abs te peto, Oppianice, ut me invitum de patris tui causa dicere existimes, adductum fide atque officio defensionis. Etenim tibi si in praesentia satis facere non potuero, tamen multae mihi ad satis faciendum reliquo tempore facultates dabuntur: Cluentio ni nunc satis fecero, postea mihi satis faciendi potestas non erit. Simul et illud quis est qui dubitare debeat, contra damnatum et mortuum pro incolumi et pro vivo dicere? cum illi, in quem dicitur, damnatio omne ignominiae periculum iam abstulerit, mors vero etiam doloris: hic autem, pro quo dicimus, nihil possit offensionis accipere sine acerbissimo animi sensu ac molestia et sine summo dedecore vitae et turpitudine. **II.** Atque ut intellegatis Cluentium non accusatorio animo, non ostentatione aliqua aut gloria adductum, sed nefariis iniuriis, cotidianis insidiis, proposito ante oculos vitae periculo, nomen Oppianici detulisse, paulo longius exordium rei demonstrandae petam: quod quaeso, iudices, ne moleste patiamini: principiis enim cognitis multo facilius extrema intellegetis.

V. A. Cluentius Habitus fuit, pater huiusce, iudices, homo non solum municipii Larinatis, ex quo erat, sed etiam regionis illius et vicinitatis virtute, existimatione, nobilitate facile princeps. Is cum esset mortuus Sulla et Pompeio consulibus, reliquit hunc annos xv natum, grandem autem et nubilem filiam, quae brevi tempore post patris mortem nupsit A. Aurio Melino, consobrino suo, adulescenti in primis, ut tum habebatur, inter suos et honesto et nobili. **12.** Cum essent eae nuptiae plenae dignitatis, plenae concordiae, repente est exorta mulieris importunae nefaria libido non solum dedecore, verum etiam scelere coniuncta. Nam Sassia, mater huius Habiti—mater enim a me in omni causa, tametsi in hunc hostili odio et crudelitate est, mater, inquam, appellabitur, neque umquam illa ita de suo scelere et immanitate audiet, ut naturae nomen amittat: quo enim est ipsum nomen amantius indulgentiusque maternum, hoc illius matris, quae multos iam annos et nunc cum maxime filium interfectum cupit, singulare scelus maiore odio dignum esse ducetis—ea igitur mater Habiti, Melini illius adulescentis, generi sui, contra quam fas erat, amore capta, primo, neque id ipsum diu, quoquo modo poterat, in illa cupiditate *se* continebat: deinde ita flagrare coepit amentia, sic inflammata ferri libidine, ut eam non pudor, non pudicitia, non pietas, non macula familiae, non hominum fama, non filii dolor, non filiae maeror a cupiditate revocaret. **13.** Animum adulescentis, nondum consilio ac ratione firmatum, pellexit eis omnibus rebus, quibus illa aetas capi ac deliniri potest. Filia, quae non solum illo communi dolore muliebri in eius modi viri iniuriis angeretur, sed nefarium matris pelicatum ferre non posset, de quo ne queri quidem se sine scelere posse arbitraretur, ceteros sui tanti mali ignaros esse cupiebat: in huius amantissimi sui fratris manibus et gremio maerore et lacrimis consenescebat. **14.** Ecce autem subitum divortium,

quod solacium malorum omnium fore videbatur. Discedit a Melino Cluentia, ut in tantis iniuriis non invita, ut a viro non libenter. Tum vero illa egregia et praeclara mater palam exsultare laetitia, triumphare gaudio coepit, victrix filiae, non libidinis: diutius suspicionibus obscuris laedi famam suam noluit: lectum illum genialem, quem biennio ante filiae suae nubenti straverat, in eadem domo sibi ornari et sterni expulsa atque exturbata filia iubet. Nubit genero socrus, nullis auspicibus, nullis auctoribus, funestis ominibus omnium.

VI. **15**. O mulieris scelus incredibile et praeter hanc unam in omni vita inauditum! o libidinem effrenatam et indomitam! o audaciam singularem! nonne timuisse, si minus vim deorum hominumque famam, at illam ipsam noctem facesque illas nuptiales? non limen cubiculi? non cubile filiae? non parietes denique ipsos, superiorum testes nuptiarum? Perfregit ac prostravit omnia cupiditate ac furore: vicit pudorem libido, timorem audacia, rationem amentia. **16**. Tulit hoc commune dedecus familiae, cognationis, nominis graviter filius: augebatur autem eius molestia cotidianis querimoniis et adsiduo fletu sororis: statuit tamen nihil sibi in tantis iniuriis ac tanto scelere matris gravius esse faciendum, quam ut illa matre ne uteretur, ne quae videre sine summo animi dolore non poterat, ea, si matre uteretur, non solum videre, verum etiam probare suo iudicio putaretur.

17. Initium quod huic cum matre fuerit simultatis audistis. Pertinuisse hoc ad causam tum, cum reliqua cognoveritis, intellegetis. Nam illud me non praeterit, cuiuscumque modi sit mater, tamen in iudicio filii de turpitudine parentis dici vix oportere. Non essem ad ullam causam idoneus, iudices, si hoc, quod in communibus hominum sensibus atque in ipsa natura positum atque infixum est, id ego, qui ad hominum pericula defendenda adiungerer, non viderem. Facile intel-

lego non modo reticere homines parentum iniurias, sed etiam animo aequo ferre oportere. Sed ego ea, quae ferri possunt, ferenda, quae taceri, tacenda esse arbitror. **18.** Nihil in vita vidit calamitatis A. Cluentius, nullum periculum mortis adiit, nihil mali timuit, quod non totum a matre esset conflatum et profectum. Quae hoc tempore sileret omnia, atque ea, si oblivione non posset, tamen taciturnitate sua tecta esse pateretur: sed vero sic agitur, ut prorsus reticeri nullo modo possit. Hoc enim ipsum iudicium, hoc periculum, illa accusatio, omnis testium copia, quae futura est, a matre initio est adornata, a matre hoc tempore instruitur atque omnibus eius opibus et copiis comparatur. Ipsa denique nuper Larino huius opprimendi causa Romam advolavit: praesto est mulier audax, pecuniosa, crudelis: instituit accusatores, instruit testes, squalore huius et sordibus laetatur, exitium exoptat, sanguinem suum profundere omnem cupit, dum modo profusum huius ante videat. Haec nisi omnia perspexeritis in causa, temere a nobis illam appellari putatote: sin erunt et aperta et nefaria, Cluentio ignoscere debebitis, quod haec a me dici patiatur: mihi ignoscere non deberetis, si tacerem.

VII. **19.** Nunc iam summatim exponam quibus criminibus Oppianicus damnatus sit, ut et constantiam A. Cluenti et rationem accusationis perspicere possitis. Ac primum causa accusandi quae fuerit ostendam, ut id ipsum A. Cluentium vi ac necessitate coactum fecisse videatis. **20.** Cum manifesto venenum deprehendisset, quod vir matris Oppianicus ei paravisset, et res non coniectura, sed oculis ac manibus teneretur, neque in causa ulla dubitatio posset esse, accusavit Oppianicum: quam constanter et quam diligenter postea dicam: nunc hoc scire vos volui, nullam huic aliam accusandi causam fuisse, nisi uti propositum vitae periculum et cotidianas capitis insidias hac una ratione evitaret. Atque ut intellegatis eis accusatum esse criminibus Oppianicum, ut

neque accusator timere neque reus sperare potuerit, pauca vobis illius iudicii crimina exponam: quibus cognitis nemo vestrum mirabitur illum diffidentem rebus suis ad Staienum atque ad pecuniam confugisse.

21. Larinas quaedam fuit Dinaea, socrus Oppianici, quae filios habuit M. et N. Aurios et Cn. Magium et filiam Magiam, nuptam Oppianico. M. Aurius adulescentulus bello Italico captus apud Asculum in Q. Sergi senatoris, eius qui inter sicarios damnatus est, manus incidit et apud eum in ergastulo fuit. Numerius autem Aurius frater eius mortuus est heredemque Cn. Magium fratrem reliquit. Postea Magia uxor Oppianici mortua est: postremo, unus qui reliquus erat Dinaeae filius, Cn. Magius est mortuus. Is heredem fecit illum adulescentem Oppianicum sororis suae filium eumque partiri cum Dinaea matre iussit. Interim venit index ad Dinaeam neque obscurus neque incertus, qui nuntiaret ei filium eius, M. Aurium, vivere et in agro Gallico esse in servitute. **22.** Mulier amissis liberis cum unius reciperandi filii spes esset ostentata, omnes suos propinquos filiique sui necessarios convocavit et ab eis flens petivit, ut negotium susciperent, adulescentem investigarent, sibi restituerent eum filium, quem tamen unum ex multis fortuna reliquum esse voluisset. Haec cum agere instituisset, oppressa morbo est. Itaque testamentum fecit eius modi, ut illi filio HS cccc milia legaret, heredem institueret eundem illum Oppianicum, nepotem suum. Atque his diebus paucis est mortua. Propinqui tamen illi, quem ad modum viva Dinaea instituerant, ita mortua illa ad investigandum M. Aurium cum eodem illo indice in agrum Gallicum profecti sunt.

VIII. **23.** Interim Oppianicus, ut erat, sicuti ex multis rebus reperietis, singulari scelere et audacia, per quendam Gallicanum, familiarem suum, primum illum indicem pecunia corrupit: deinde ipsum M. Aurium non magna iactura facta

= inhabitant of ager Gallicus

tollendum interficiendumque curavit. Illi autem, qui erant ad propinquum investigandum et reciperandum profecti, litteras Larinum ad Aurios illius adulescentis suosque necessarios mittunt, sibi difficilem esse investigandi rationem, quod intellegerent indicem ab Oppianico esse corruptum. Quas litteras A. Aurius, vir fortis et experiens et domi nobilis et M. illius Auri perpropinquus, in foro, palam, multis audientibus, cum adesset Oppianicus, recitat et clarissima voce se nomen Oppianici, si interfectum M. Aurium esse comperisset, delaturum esse testatur. **24.** Interim brevi tempore illi, qui erant in agrum Gallicum profecti, Larinum revertuntur: interfectum esse M. Aurium renuntiant. Animi non solum propinquorum, sed etiam omnium Larinatium odio Oppianici et illius adulescentis misericordia commoventur. Itaque cum Aurius, is qui antea denuntiarat, clamore hominem ac minis insequi coepisset, Larino profugit et se in castra clarissimi viri, Q. Metelli, contulit. **25.** Post illam autem fugam et sceleris et conscientiae testem numquam se iudiciis, numquam legibus, numquam inermum inimicis committere ausus est, sed per illam L. Sullae vim atque victoriam Larinum in summo timore omnium cum armatis advolavit: quattuorviros, quos municipes fecerant, sustulit: se a Sulla et tres praeterea factos esse dixit et ab eodem sibi esse imperatum, ut Aurium illum, qui sibi delationem nominis et capitis periculum ostentarat, et alterum Aurium et eius L. filium et Sex. Vibium, quo sequestre in illo indice corrumpendo dicebatur esse usus, proscribendos interficiendosque curaret. Itaque illis crudelissime interfectis non mediocri ab eo ceteri proscriptionis et mortis metu tenebantur. His rebus in causa iudicioque patefactis quis est qui illum absolvi potuisse arbitretur?

IX. Atque haec parva sunt: cognoscite reliqua, ut non aliquando condemnatum esse Oppianicum, sed aliquam diu incolumem fuisse miremini.

26. Primum videte hominis audaciam. Sassiam in matrimonium ducere, Habiti matrem, illam, cuius virum A. Aurium occiderat, concupivit. Utrum impudentior hic, qui postulet, an crudelior illa, si nubat, difficile dictu est: sed tamen utriusque humanitatem constantiamque cognoscite. **27**. Petit Oppianicus, ut sibi Sassia nubat, et id magno opere contendit. Illa autem non admiratur audaciam, non impudentiam aspernatur, non denique illam Oppianici domum viri sui sanguine redundantem reformidat, sed quod haberet ille tres filios, idcirco se ab eis nuptiis abhorrere respondit. Oppianicus, qui pecuniam Sassiae concupivisset, domo sibi quaerendum remedium existimavit ad eam moram, quae nuptiis adferebatur. Nam cum haberet ex Novia infantem filium, alter autem eius filius, Papia natus, Teani Apuli, quod abest a Larino XVIII milia passuum, apud matrem educaretur, arcessit subito sine causa puerum Teano: quod facere nisi ludis aut festis diebus antea non solebat. Mater misera nihil mali suspicans mittit. Ille se Tarentum proficisci cum simulasset, eo ipso die puer, hora undecima cum valens in publico visus esset, ante noctem mortuus et postridie ante quam luceret combustus est. **28**. Atque hunc tantum maerorem matri prius hominum rumor quam quisquam ex Oppianici familia nuntiavit. Illa cum uno tempore audisset sibi non solum filium, sed etiam exsequiarum munus ereptum, Larinum confestim exanimata venit et ibi de integro funus iam sepulto filio fecit. Dies nondum decem intercesserant, cum ille alter filius infans necatur. Itaque nubit Oppianico continuo Sassia, laetanti iam animo et spe optime confirmato. Nec mirum, quae se non nuptialibus donis, sed filiorum funeribus esse delinitam videret. Ita quod ceteri propter liberos pecuniae cupidiores solent esse, ille propter pecuniam liberos amittere iucundum esse duxit.

X. **29**. Sentio, iudices, vos pro vestra humanitate his tantis

sceleribus breviter a me demonstratis vehementer esse commotos. Quo tandem igitur animo fuisse illos arbitramini, quibus his de rebus non modo audiendum fuit, verum etiam iudicandum? Vos auditis de eo, in quem iudices non estis, de eo, quem non videtis, de eo, quem odisse iam non potestis, de eo, qui et naturae et legibus satis fecit, quem leges exsilio, natura morte multavit: auditis non ab inimico, auditis sine testibus, auditis, cum ea, quae copiosissime dici possunt, breviter a me strictimque dicuntur. Illi audiebant de eo, de quo iurati sententias ferre debebant, de eo, cuius praesentis nefarium et consceleratum voltum intuebantur, de eo, quem omnes oderant propter audaciam, de eo, quem omni supplicio dignum esse ducebant: audiebant ab accusatoribus, audiebant verba multorum testium, audiebant, cum una quaque de re a P. Cannutio, homine eloquentissimo, graviter et diu diceretur. **30**. Et est quisquam qui cum haec cognoverit, suspicari possit Oppianicum iudicio oppressum et circumventum esse innocentem?

Acervatim iam reliqua, iudices, dicam, ut ad ea, quae propiora huiusce causae et adiunctiora sunt, perveniam: vos, quaeso, memoria teneatis non mihi hoc esse propositum, ut accusem Oppianicum mortuum, sed cum hoc persuadere vobis velim, iudicium ab hoc non esse corruptum, hoc uti initio ac fundamento defensionis, Oppianicum hominem sceleratissimum et nocentissimum esse damnatum. Qui uxori suae Cluentiae, quae amita huius Habiti fuit, cum ipse poculum dedisset, subito illa in media potione exclamavit se maximo cum dolore emori: nec diutius vixit quam locuta est: nam in ipso sermone hoc et vociferatione mortua est. Et ad hanc mortem repentinam vocesque morientis omnia praeterea, quae solent esse indicia et vestigia veneni, in illius mortuae corpore fuerunt. Eodemque veneno C. Oppianicum fratrem necavit.

XI. **31.** Neque est hoc satis: tametsi in ipso fraterno parricidio nullum scelus praetermissum videtur, tamen, ut ad hoc nefarium facinus accederet, aditum sibi aliis sceleribus ante munivit. Nam cum esset gravida Auria, fratris uxor, et iam appropinquare partus putaretur, mulierem veneno interfecit, ut una illud, quod erat ex fratre conceptum, necaretur. Post fratrem adgressus est: qui sero iam exhausto illo poculo mortis cum et de suo et de uxoris interitu clamaret testamentumque mutare cuperet, in ipsa significatione huius voluntatis est mortuus. Ita mulierem, ne partu eius ab hereditate fraterna excluderetur, necavit: fratris autem liberos prius vita privavit quam illi hanc a natura lucem accipere potuerunt: ut omnes intellegerent nihil ei [clausum, nihil] sanctum esse posse, a cuius audacia fratris liberos ne materni quidem corporis custodiae tegere potuissent. **32.** Memoria teneo Milesiam quandam mulierem, cum essem in Asia, quod ab heredibus [secundis] accepta pecunia partum sibi ipsa medicamentis abegisset, rei capitalis esse damnatam: nec iniuria, quae spem parentis, memoriam nominis, subsidium generis, heredem familiae, designatum rei publicae civem sustulisset. Quanto est Oppianicus in eadem iniuria maiore supplicio dignus! si quidem illa, cum suo corpori vim attulisset, se ipsa cruciavit, hic autem idem illud effecit per alieni corporis mortem atque cruciatum. Ceteri non videntur in singulis hominibus multa parricidia suscipere posse, Oppianicus inventus est qui in uno corpore plures necaret.

XII. **33.** Itaque, cum hanc eius consuetudinem audaciamque cognosset avunculus illius adulescentis Oppianici, Cn. Magius, isque, cum gravi morbo adfectus esset, heredem illum sororis suae filium faceret, adhibitis amicis, praesente matre sua, Dinaea, uxorem suam interrogavit, essetne praegnans. Quae cum se esse respondisset, ab ea petivit, ut

fraternum parricidium

se mortuo apud Dinaeam, quae tum ei mulieri socrus erat, quoad pareret, habitaret diligentiamque adhiberet, ut id, quod conceperat, servare et salvum parere posset. Itaque ei testamento legat grandem pecuniam a filio, si qui natus erit: ab secundo herede nihil legat. **34.** Quid de Oppianico suspicatus sit videtis: quid iudicarit obscurum non est. Nam cuius filium faceret heredem, eum tutorem liberis non adscripsit. Quid Oppianicus fecerit cognoscite, ut illum Magium intellegatis non longe animo prospexisse morientem. Quae pecunia mulieri legata erat a filio, si qui natus erit, eam praesentem Oppianicus non debitam mulieri solvit, si haec solutio legatorum et non merces abortionis appellanda est. Quo illa pretio accepto multisque praeterea muneribus, quae tum ex tabulis Oppianici recitabantur, spem illam, quam in alvo commendatam a viro continebat, victa avaritia sceleri Oppianici vendidit. **35.** Nihil posse iam ad hanc improbitatem addi videtur: attendite exitum. Quae mulier obtestatione viri decem illis mensibus ne domum quidem ullam nisi socrus suae nosse debuit, haec quinto mense post viri mortem ipsi Oppianico nupsit. Quae nuptiae non diuturnae fuerunt. Erant enim non matrimonii dignitate, sed sceleris societate coniunctae.

XIII. **36.** Quid? illa caedes Asuvi Larinatis adulescentis pecuniosi, quam clara tum recenti re fuit, quam omnium sermone celebrata! Fuit Avillius quidam Larino perdita nequitia et summa egestate, arte quadam praeditus ad libidines adulescentulorum excitandas accommodata, qui ut se blanditiis et adsentationibus in Asuvi consuetudinem penitus immersit, Oppianicus continuo sperare coepit, hoc se Avillio tamquam aliqua machina admota capere Asuvi adulescentiam et fortunas eius patrias expugnare posse. Ratio excogitata Larini est, res translata Romam. Iniri enim consilium facilius in solitudine, perficere rem eius modi

commodius in turba posse arbitrati sunt. Asuvius cum Avillio Romam est profectus: hos vestigiis Oppianicus consecutus est. Iam ut Romae vixerint, quibus conviviis, quibus flagitiis, quantis et quam profusis sumptibus, non modo conscio, sed etiam conviva et adiutore Oppianico, longum est dicere mihi, praesertim ad alia properanti. Exitum huius adsimulatae familiaritatis cognoscite. **37.** Cum esset adulescens apud mulierculam quandam atque, ubi pernoctaret, ibi diem posterum commoraretur, Avillius, ut erat constitutum, simulat se aegrotare et testamentum facere velle. Oppianicus obsignatores ad eum, qui neque Asuvium neque Avillium nossent, adducit et illum Asuvium appellat ipse. Testamento Asuvi nomine obsignato disceditur. Avillius ilico convalescit. Asuvius autem brevi illo tempore, quasi in hortulos iret, in harenarias quasdam extra portam Esquilinam perductus occiditur. **38.** Qui cum unum iam et alterum diem desideraretur neque in iis locis, ubi ex consuetudine quaerebatur, inveniretur, et Oppianicus in foro Larinatium dictitaret nuper se et suos amicos testamentum eius obsignasse, liberti Asuvi et non nulli amici, quod eo die, quo postremum Asuvius visus erat, Avillium cum eo fuisse et a multis visum esse constabat, in eum invadunt et hominem ante pedes Q. Manli, qui tum erat triumvir, constituunt: atque ille continuo, nullo teste, nullo indice, recentis maleficii conscientia perterritus, omnia, ut a me paullo ante dicta sunt, exponit Asuviumque a sese consilio Oppianici interfectum fatetur. **39.** Extrahitur domo latitans Oppianicus a Manlio: index Avillius ex altera parte coram tenetur. Hic quid iam reliqua quaeritis? Manlium plerique noratis: non ille honorem a pueritia, non studia virtutis, non ullum existimationis bonae fructum umquam cogitarat: ex petulanti atque improbo scurra in discordiis civitatis ad eam columnam, ad quam multorum saepe conviciis perductus erat,

tum suffragiis populi pervenerat. Itaque [rem] cum Oppianico transigit, pecuniam ab eo accipit, causam et susceptam et tam manifestam relinquit. Ac tum in Oppianici causa crimen hoc Asuvianum cum testibus multis tum vero indicio Avilli comprobabatur: in quo adligatum Oppianici nomen primum esse constabat, eius, quem vos miserum atque innocentem falso iudicio circumventum esse dicitis.

XIV. **40.** Quid? aviam tuam, Oppianice, Dinaeam, cui tu es heres, pater tuus non manifesto necavit? ad quam cum adduxisset medicum illum suum, iam cognitum et saepe victorem, [per quem interfecerat plurimos], mulier exclamat se ab eo nullo modo curari velle, quo curante omnes suos perdidisset. Tum repente Anconitanum quemdam, L. Clodium, pharmacopolam circumforaneum, qui casu tum Larinum venisset, adgreditur et cum eo duobus milibus HS, id quod ipsius tabulis est demonstratum, transigit. L. Clodius, cum properaret, cui fora multa restarent, simul atque introductus est, rem confecit: prima potione mulierem sustulit, neque postea Larini punctum est temporis commoratus. **41.** Eadem hac Dinaea testamentum faciente, cum tabulas prehendisset Oppianicus, qui gener eius fuisset, digito legata delevit et cum id multis locis fecisset, post mortem eius, ne lituris coargui posset, testamentum in alias tabulas transscriptum signis adulterinis obsignavit. Multa praetereo consulto: etenim vereor ne haec ipsa nimium multa esse videantur: vos tamen similem sui eum fuisse in ceteris quoque vitae partibus existimare debetis. Illum tabulas publicas Larini censorias corrupisse decuriones universi iudicaverunt. Cum illo nemo iam rationem, nemo rem ullam contrahebat: nemo illum ex tam multis cognatis et adfinibus tutorem umquam liberis suis scripsit: nemo illum aditu, nemo congressione, nemo sermone, nemo convivio dignum iudicavit: omnes aspernabantur, omnes ab-

horrebant, omnes ut aliquam immanem ac perniciosam bestiam pestemque fugiebant. **42.** Hunc tamen hominem tam audacem, tam nefarium, tam nocentem numquam accusasset Habitus, iudices, si id praetermittere suo salvo capite potuisset. Erat huic inimicus Oppianicus: erat, sed tamen erat vitricus: crudelis et huic infesta mater, at mater. Postremo nihil tam remotum ab accusatione quam Cluentius et natura et voluntate et instituta ratione vitae. Sed cum esset haec ei proposita condicio, ut aut iuste pieque accusaret aut acerbe indigneque moreretur, accusare, quoquo modo posset, quam illo modo emori maluit.

43. Atque ut hoc ita esse perspicere possitis, exponam vobis Oppianici facinus manifesto compertum atque deprehensum: ex quo simul utrumque, et huic accusare et illi condemnari, necesse fuisse intellegetis.

XV. Martiales quidam Larini appellabantur, ministri publici Martis atque ei deo veteribus institutis religionibusque Larinatium consecrati: quorum cum satis magnus numerus esset, cumque item, ut in Sicilia permulti Venerii sunt, sic illi Larini in Martis familia numerarentur, repente Oppianicus eos omnes liberos esse civesque Romanos coepit defendere. Graviter id decuriones Larinatium cunctique municipes tulerunt. Itaque ab Habito petiverunt, ut eam causam susciperet publiceque defenderet. Habitus cum se ab omni eius modi negotio removisset, tamen pro loco, pro antiquitate generis sui, pro eo, quod [se] non suis commodis, sed etiam suorum municipum ceterorumque necessariorum natum esse arbitrabatur, tantae voluntati universorum Larinatium deesse noluit. **44.** Suscepta causa Romamque delata magnae cotidie contentiones inter Habitum et Oppianicum ex utriusque studio defensionis excitabantur. Erat ipse immani acerbaque natura Oppianicus: incendebat eius amentiam infesta atque inimica filio mater Habiti. Magni autem illi sua

interesse arbitrabantur hunc a causa Martialium removeri. Suberat etiam alia causa maior, quae Oppianici hominis avarissimi mentem maxime commovebat. **45.** Nam Habitus usque ad illius iudicii tempus nullum testamentum umquam fecerat. Neque legare eius modi matri poterat animum inducere, neque testamento nomen omnino praetermittere parentis. Id cum Oppianicus sciret—neque enim erat obscurum—intellegebat Habito mortuo bona eius omnia ad matrem esse ventura: quae ab sese postea aucta pecunia maiore praemio, orbata filio minore periculo necaretur. Itaque his rebus incensus, qua ratione Habitum veneno tollere conatus sit cognoscite.

XVI. **46.** C. et L. Fabricii fratres gemini fuerunt ex municipio Alatrinati, homines inter se cum forma tum moribus similes, municipum autem suorum dissimillimi, in quibus quantus splendor sit, quam prope aequabilis, quam fere omnium constans et moderata ratio vitae, nemo vestrum, ut mea fert opinio, ignorat. His Fabriciis semper est usus Oppianicus familiarissime. Iam hoc fere scitis omnes, quantam vim habeat ad coniungendas amicitias studiorum ac naturae similitudo. Cum illi ita viverent, ut nullum quaestum turpem esse arbitrarentur, cum omnis ab eis fraus, omnes insidiae circumscriptionesque adulescentium nascerentur, cumque essent vitiis atque improbitate omnibus noti, studiose, ut dixi, ad eorum se familiaritatem multis iam ante annis Oppianicus applicarat. **47.** Itaque tum sic statuit, per C. Fabricium—nam L. erat mortuus—insidias Habito comparare. Erat illo tempore infirma valetudine Habitus. Utebatur autem medico non ignobili, sed spectato homine, Cleophanto: cuius servum Diogenem Fabricius ad venenum Habito dandum spe et pretio sollicitare coepit. Servus non incallidus et, ut res ipsa declaravit, frugi atque integer, sermonem Fabricii non est aspernatus: rem ad dominum detulit: Cleophantus autem

cum Habito est collocutus. Habitus statim cum M. Baebio senatore, familiarissimo suo, communicavit: qui qua fide, qua prudentia, qua diligentia fuerit meminisse vos arbitror. Ei placuit ut Diogenem Habitus emeret a Cleophanto, quo facilius aut comprehenderetur res eius indicio aut falsa esse cognosceretur. Ne multa: Diogenes emitur: venenum diebus paucis comparatur: multi viri boni cum ex occulto intervenissent, pecunia obsignata, quae ob eam rem dabatur, in manibus Scamandri liberti Fabriciorum deprehenditur. 48. Pro di immortales! Oppianicum quisquam his rebus cognitis circumventum esse dicet?

XVII. Quis umquam audacior? quis nocentior? quis apertior in iudicium adductus est? Quod ingenium, quae facultas dicendi, quae a quoquam excogitata defensio huic uni crimini potuit obsistere? Simul et illud quis est qui dubitet quin hac re comperta manifesteque deprehensa aut obeunda mors Cluentio aut suscipienda accusatio fuerit?

49. Satis esse arbitror demonstratum, iudices, eis criminibus accusatum esse Oppianicum, uti honeste absolvi nullo modo potuerit. Cognoscite nunc ita reum citatum esse illum, ut re semel atque iterum praeiudicata condemnatus in iudicium venerit. Nam Cluentius, iudices, primum nomen eius detulit, cuius in manibus venenum deprehenderat. Is erat libertus Fabriciorum Scamander. Integrum consilium, iudicii corrupti nulla suspicio: simplex in iudicium causa, certa res, unum crimen adlatum est. Hic tum C. Fabricius, is, de quo ante dixi, qui liberto damnato sibi illud impendere periculum videret, quod mihi cum Alatrinatibus vicinitatem et cum plerisque eorum magnum usum esse sciebat, frequentes eos ad me domum adduxit. Qui quamquam de homine, sicut necesse erat, existimabant, tamen, quod erat ex eodem municipio, suae dignitatis esse arbitrabantur eum quibus rebus possent defendere: idque a me ut facerem et ut causam Scamandri

susciperem petebant, in qua causa patroni omne periculum continebatur. **50.** Ego, qui neque illis talibus viris ac tam amantibus mei rem possem ullam negare neque illud crimen tantum ac tam manifestum esse arbitrarer, sicut ne illi quidem ipsi, qui mihi tum illam causam commendabant, arbitrabantur, pollicitus eis sum me omnia quae vellent esse facturum.

XVIII. Res agi coepta est: citatus est Scamander reus. Accusabat P. Cannutius, homo in primis ingeniosus et in dicendo exercitatus: accusabat autem ille quidem Scamandrum verbis tribus: V e n e n u m esse deprehensum: omnia tela totius accusationis in Oppianicum coniciebantur, aperiebatur causa insidiarum, Fabriciorum familiaritas commemorabatur, hominis vita et audacia proferebatur, denique omnis accusatio varie graviterque tractata, ad extremum manifesta veneni deprehensione conclusa est. **51.** Hic ego tum ad respondendum surrexi: qua cura, di immortales! qua sollicitudine animi! quo timore! Semper equidem magno cum metu incipio dicere: quotienscumque dico, totiens mihi videor in iudicium venire non ingenii solum, sed etiam virtutis atque officii, ne aut id profiteri videar, quod non possim, quod est impudentiae, aut non id efficere, quod possim, quod est aut perfidiae aut neglegentiae. Tum vero ita sum perturbatus, ut omnia timerem: si nihil dixissem, ne infantissimus: si multa in eius modi causa dixissem, ne impudentissimus existimarer.

XIX. Collegi me aliquando et ita constitui, fortiter esse agendum; illi aetati, qua tum eram, solere laudi dari, etiam si in minus firmis causis hominum periculis non defuissem. Itaque feci: sic pugnavi, sic omni ratione contendi, sic ad omnia confugi, quantum ego adsequi potui, remedia ac perfugia causarum, ut hoc, quod timide dicam, consecutus sim, ne quis illi causae patronum defuisse arbitraretur. **52.** Sed ut quicquid ego apprehenderam, statim accusator extorquebat e manibus. Si quaesiveram quae inimicitiae Scamandro cum

Habito, fatebatur nullas fuisse, sed Oppianicum, cuius ille minister fuisset, huic inimicissimum fuisse atque esse dicebat. Sin autem illud egeram, nullum ad Scamandrum morte Habiti venturum emolumentum fuisse, concedebat, sed ad uxorem Oppianici, hominis in uxoribus necandis exercitati, omnia bona Habiti ventura fuisse dicebat. Cum illa defensione usus essem, quae in libertinorum causis honestissima semper existimata est, Scamandrum patrono esse probatum, fatebatur, sed quaerebat cui probatus esset ipse patronus. **53.** Cum ego pluribus verbis in eo commoratus essem, Scamandro insidias factas esse per Diogenem constitutumque inter eos alia de re fuisse, ut medicamentum, non venenum Diogenes adferret, hoc cuivis usu venire posse, quaerebat cur in eius modi locum, tam abditum, cur solus, cur cum obsignata pecunia venisset. Denique hoc loco causa testibus honestissimis hominibus premebatur. M. Baebius de suo consilio Diogenem emptum, se praesente Scamandrum cum veneno pecuniaque deprehensum esse dicebat. P. Quintilius Varus, homo summa religione et summa auctoritate praeditus, de insidiis, quae fierent Habito, et de sollicitatione Diogenis recenti re secum Cleophantum collocutum esse dicebat. **54.** Atque in illo iudicio cum Scamandrum nos defendere videremur, verbo ille reus erat, re quidem vera et periculo tota accusatione Oppianicus. Neque id obscure ferebat nec dissimulare ullo modo poterat: aderat frequens, advocabat, omni studio gratiaque pugnabat: postremo, id quod maximo malo illi causae fuit, hoc ipso in loco, quasi reus ipse esset, sedebat. Oculi omnium iudicum non in Scamandrum, sed in Oppianicum coniciebantur: timor eius, perturbatio, suspensus incertusque voltus, crebra coloris mutatio, quae erant antea suspiciosa, haec aperta et manifesta faciebant.

XX. **55.** Cum in consilium iri oporteret, quaesivit ab reo C. Iunius quaesitor ex lege illa Cornelia, quae tum erat,

clam an palam de se sententiam ferri vellet. De Oppianici sententia responsum est, quod is Habiti familiarem Iunium esse dicebat, clam velle ferri. Itum est in consilium. Omnibus sententiis praeter unam, quam suam Staienus esse dicebat, Scamander prima actione condemnatus est. Quis tum erat omnium qui Scamandro condemnato non iudicium de Oppianico factum esse arbitraretur? quid est illa damnatione iudicatum, nisi venenum id, quod Habito daretur, esse quaesitum? Quae porro tenuissima suspicio collata in Scamandrum est aut conferri potuit, ut is sua sponte necare voluisse Habitum putaretur?

56. Atque hoc tum iudicio facto et Oppianico re et existimatione iam, lege et pronuntiatione nondum condemnato, tamen Habitus Oppianicum reum statim non fecit. Voluit cognoscere utrum iudices in eos solos essent severi, quos venenum habuisse ipsos comperissent, an etiam consilia conscientiasque eius modi facinorum supplicio dignas iudicarent. Itaque C. Fabricium, quem propter familiaritatem Oppianici conscium illi facinori fuisse arbitrabatur, reum statim fecit: utique ei locus primus constitueretur propter causae coniunctionem impetravit. Hic tum Fabricius non modo ad me meos vicinos et amicos Alatrinates non adduxit, sed ipse eis neque defensoribus uti postea neque laudatoribus potuit. **57.** Rem enim integram hominis non alieni quamvis suspiciosam defendere humanitatis esse putabamus, iudicatam labefactare conari impudentiae. Itaque tum ille inopia et necessitate coactus in causa eius modi ad Caepasios fratres confugit, homines industrios atque eo animo, ut quaecumque dicendi potestas esset data, in honore atque in beneficio ponerent.

XXI. Iam hoc prope iniquissime comparatum est, quod in morbis corporis, ut quisque est difficillimus, ita medicus nobilissimus atque optimus quaeritur, in periculis capitis, ut

quaeque causa difficillima est, ita deterrimus obscurissimusque patronus adhibetur: nisi forte hoc causae est, quod medici nihil praeter artificium, oratores etiam auctoritatem praestare debent. 58. Citatur reus, [agitur causa:] paucis verbis accusat, ut de re iudicata, Cannutius: incipit longo et alte petito prooemio respondere maior Caepasius. Primo attente auditur eius oratio; erigebat animum iam demissum et oppressum Oppianicus; gaudebat ipse Fabricius: non intellegebat animos iudicum non illius eloquentia, sed defensionis impudentia commoveri. Postea quam de re coepit dicere, ad ea, quae erant in causa, addebat etiam ipse nova quaedam vulnera, ut quamquam sedulo faciebat, tamen interdum non defendere, sed praevaricari accusationi videretur. Itaque cum callidissime se dicere putaret et cum illa verba gravissima ex intimo artificio deprompsisset: 'Respicite, iudices, hominum fortunas, respicite dubios variosque casus, respicite C. Fabrici senectutem': cum hoc 'respicite' ornandae orationis causa saepe dixisset, respexit ipse. At C. Fabricius a subselliis demisso capite discesserat. 59. Hic iudices ridere, stomachari atque acerbe ferre patronus, causam sibi eripi et se cetera de illo loco Respicite, iudices, non posse dicere: nec quicquam propius est factum, quam ut illum persequeretur et collo obtorto ad subsellia reduceret, ut reliqua posset perorare. Ita tum Fabricius primum suo iudicio, quod est gravissimum, deinde legis vi et sententiis iudicum est condemnatus.

XXII. Quid est quod iam de Oppianici persona causaque plura dicamus? Apud eosdem iudices reus est factus, cum his duobus praeiudiciis iam damnatus esset: ab isdem autem iudicibus, qui Fabriciorum damnatione de Oppianico iudicarant, locus ei primus est constitutus: accusatus est criminibus gravissimis et eis, quae a me breviter dicta sunt, et praeterea multis, quae ego omnia [nunc] omitto: accusatus

est apud eos, qui Scamandrum ministrum Oppianici, C. Fabricium conscium maleficii condemnarant. **60.** Utrum, per deos immortales! magis est mirandum, quod is condemnatus est, an quod omnino respondere ausus est? Quid enim illi iudices facere potuerunt? qui si innocentes Fabricios condemnassent, tamen in Oppianico sibi constare et superioribus consentire iudiciis debuerunt. An vero illi sua per se ipsi iudicia rescinderent, cum ceteri soleant in iudicando ne ab aliorum iudiciis discrepent providere? et ei, qui Fabrici libertum, quia minister in maleficio fuerat, patronum, quia conscius, condemnassent, ipsum principem atque architectum sceleris absolverent? et qui ceteros nullo praeiudicio facto tamen ex ipsa causa condemnassent, hunc, quem bis iam condemnatum acceperant, liberarent? **61.** Tum vero illa iudicia senatoria non falsa invidia, sed vera atque insigni turpitudine notata atque operta dedecore et infamia defensioni locum nullum reliquissent. Quid enim tandem illi iudices responderent, si qui ab eis quaereret: 'condemnastis Scamandrum: quo crimine?' 'nempe, quod Habitum per servum medici veneno necare voluisset.' 'quid Habiti morte Scamander consequebatur?' 'nihil, sed administer erat Oppianici.' 'et condemnastis C. Fabricium: quid ita?' 'quia, cum ipse familiarissime Oppianico usus, libertus autem eius in maleficio deprehensus esset, illum expertem eius consilii fuisse non probabatur.' Si igitur ipsum Oppianicum bis suis iudiciis condemnatum absolvissent, quis tantam turpitudinem iudiciorum, quis tantam inconstantiam rerum iudicatarum, quis tantam libidinem iudicum ferre potuisset?

62. Quod si hoc videtis, quod iam hac omni oratione patefactum est, illo iudicio reum condemnari, praesertim ab isdem iudicibus, qui duo praeiudicia fecissent, necesse fuisse, simul illud videatis necesse est, nullam accusatoris esse causam potuisse cur iudicium vellet corrumpere.

XXIII. Quaero enim de te, T. Acci, relictis iam ceteris argumentis omnibus, num Fabricios quoque innocentes condemnatos existimes, num etiam illa iudicia pecunia corrupta esse dicas, quibus in iudiciis alter a Staieno solo absolutus est, alter etiam ipse se condemnavit. Age, si nocentes, cuius maleficii? num quid praeter venenum quaesitum, quo Habitus necaretur, obiectum est? num quid aliud in illis iudiciis versatum est praeter hasce insidias Habito ab Oppianico per Fabricium factas? Nihil, nihil, inquam, aliud, iudices, reperietis. Exstat memoria: sunt tabulae publicae: redargue me, si mentior: testium dicta recita: doce in illorum iudiciis quid praeter hoc venenum Oppianici non modo in criminis, sed in male dicti loco sit obiectum. 63. Multa dici possunt quare ita necesse fuerit iudicari, sed ego occurram exspectationi vestrae, iudices. Nam etsi a vobis sic audior, ut numquam benignius neque attentius quemquam auditum putem, tamen vocat me alio iam dudum tacita vestra exspectatio, quae mihi obloqui videtur: 'quid ergo? negasne illud iudicium corruptum esse?' Non nego, sed ab hoc corruptum non esse confirmo. 'A quo igitur est corruptum?' Opinor, primum, si incertum fuisset quisnam exitus illius iudicii futurus esset, veri similius tamen esset, eum potius corrupisse, qui metuisset ne ipse condemnaretur, quam illum, qui veritus esset ne alter absolveretur: deinde cum esset non dubium quid iudicari necesse esset, eum certe potius, qui sibi alia ratione diffideret, quam eum, qui omni ratione confideret: postremo certe potius illum, qui bis apud eos iudices offendisset, quam eum, qui bis eis causam probavisset. 64. Unum quidem certe nemo erit tam inimicus Cluentio qui mihi non concedat: si constet corruptum illud iudicium esse, aut ab Habito aut ab Oppianico esse corruptum. Si doceo non ab Habito, vinco ab Oppianico: si ostendo ab Oppianico, purgo Habitum.

Quare, etsi satis docui rationem nullam huic corrumpendi iudicii fuisse, ex quo intellegitur ab Oppianico esse corruptum, tamen de illo ipso separatim cognoscite.

XXIV. Atque ego illa non argumentabor, quae sunt gravia vehementer: eum corrupisse, qui in periculo fuerit: eum, qui metuerit: eum, qui spem salutis in alia ratione non habuerit: eum, qui semper singulari fuerit audacia. Multa sunt eius modi: verum cum habeam rem non dubiam, sed apertam atque manifestam, enumeratio singulorum argumentorum non est necessaria. **65.** Dico C. Aelio Staieno iudici pecuniam grandem Statium Albium ad corrumpendum iudicium dedisse. Num quis negat? Te, Oppianice, appello: te, Acci: quorum alter eloquentia damnationem illam, alter tacita pietate deplorat. Audete negare ab Oppianico Staieno iudici pecuniam datam: negate, inquam, meo loco. Quid tacetis? an negare non potestis, quod repetistis, quod confessi estis, quod abstulistis? Quo tandem igitur ore mentionem corrupti iudicii facitis, cum ab ista parte iudici pecuniam ante iudicium datam, post iudicium ereptam esse fateamini? **66.** Quonam igitur haec modo gesta sunt? Repetam paullo altius, iudices, et omnia, quae in diuturna obscuritate latuerunt, sic aperiam, ut ea cernere oculis videamini. Vos quaeso, ut adhuc me attente audistis, ut item, quae reliqua sunt, audiatis: profecto nihil a me dicetur, quod non dignum hoc conventu et silentio, dignum vestris studiis atque auribus esse videatur.

Nam ut primum Oppianicus ex eo, quod Scamander reus erat factus, quid sibi impenderet coepit suspicari, statim se ad hominis egentis, audacis, in iudiciis corrumpendis exercitati, tum autem iudicis, Staieni familiaritatem se applicavit. Ac primum Scamandro reo tantum donis datis muneribusque perfecerat, ut eo fautore uteretur cupidiore, quam fides iudicis postulabat. **67.** Post autem cum esset Scamander unius

Staieni [sententia absolutus], patronus autem Scamandri ne sua quidem sententia liberatus, acrioribus saluti suae remediis subveniendum putavit. Tum ab Staieno, sicut ab homine ad excogitandum acutissimo, ad audendum impudentissimo, ad efficiendum acerrimo—haec enim ille et aliqua ex parte habebat et maiore ex parte se habere simulabat—auxilium capiti ac fortunis suis petere coepit.

XXV. Iam hoc non ignoratis, iudices, ut etiam bestiae fame monitae plerumque ad eum locum, ubi pastae sunt aliquando, revertantur. **68.** Staienus ille biennio ante, cum causam bonorum Safini Atellae recepisset, sescentis milibus nummum se iudicium corrupturum esse dixerat: quae cum accepisset a pupillo, suppressit: iudicioque facto nec Safinio nec bonorum emptoribus reddidit. Quam cum pecuniam profudisset et sibi nihil non modo ad cupiditates suas, sed ne ad necessitatem quidem reliquisset, statuit ad easdem esse sibi praedas ac suppressiones iudiciales revertendum. Itaque cum Oppianicum iam perditum et duobus iugulatum praeiudiciis videret, promissis suis eum excitavit abiectum et simul saluti desperare vetuit. Oppianicus autem orare hominem coepit, ut sibi rationem ostenderet iudicii corrumpendi.

69. Ille autem, quem ad modum ex ipso Oppianico postea est auditum, negavit quemquam esse in civitate praeter se qui id efficere possit. Sed primo gravari coepit, quod aedilitatem se petere cum hominibus nobilissimis et invidiam atque offensionem timere dicebat. Post exoratus initio permagnam pecuniam poposcit: deinde ad id pervenit, quod confici potuit: HS sescenta quadraginta milia deferri ad se domum iussit. Quae pecunia simul atque ad eum delata est, homo impurissimus statim coepit in eius modi mente et cogitatione versari, nihil esse suis rationibus utilius quam Oppianicum condemnari: illo absoluto pecuniam illam aut iudicibus dispertiendam aut ipsi esse reddundam: damnato repetiturum

esse neminem. **70.** Itaque rem excogitat singularem. Atque haec, iudices, quae vera dicuntur a nobis, facilius credetis, si cum animis vestris longo intervallo recordari C. Staieni vitam et naturam volueritis. Nam perinde ut opinio est de cuiusque moribus, ita quid ab eo factum aut non factum sit existimari potest.

XXVI. Cum esset egens, sumptuosus, audax, callidus, perfidiosus, et cum domi suae miserrimis in locis et inanissimis tantum nummorum positum videret, ad omnem malitiam et fraudem versare suam mentem coepit: 'ego dem iudicibus? mihi ipsi igitur praeter periculum et infamiam quid quaeretur? Nihil excogitem quam ob rem Oppianicum damnari necesse sit? Quid tandem—nihil enim est quod non fieri possit—si quis eum forte casus ex periculo eripuerit, nonne reddundum est? Praecipitantem igitur impellamus,' inquit, 'et perditum prosternamus.' **71.** Capit hoc consilii, ut pecuniam quibusdam iudicibus levissimis polliceatur, deinde eam postea supprimat: ut, quoniam graves homines sua sponte severe iudicaturos putabat, eos, qui leviores erant, destitutione iratos Oppianico redderet. Itaque, ut erat semper praeposterus atque perversus, initium facit a Bulbo, et eum, quod iam diu nihil quaesierat, tristem atque oscitantem leviter impellit. 'Quid tu?' inquit, 'ecquid me adiuvas, Bulbe, ne gratis rei publicae serviamus?' Ille vero, simul atque hoc audivit: 'ne gratis': 'quo voles,' inquit, 'sequar: sed quid adfers?' Tum ei quadraginta milia, si esset absolutus Oppianicus, pollicetur, et eum, ut ceteros appellet, quibuscum loqui consuesset, rogat, atque etiam ipse conditor totius negotii Guttam aspergit huic Bulbo. **72.** Itaque minime amarus eis visus est, qui aliquid ex eius sermone speculae degustarant. Unus et alter dies intercesserat, cum res parum certa videbatur: sequester et confirmator pecuniae desiderabatur. Tum appellat hilaro vultu hominem Bulbus, ut blandissime potest: 'quid tu,' inquit, 'Paete?'—hoc

ex imaginibus Aeliorum

enim sibi Staienus cognomen ex imaginibus Aeliorum delegerat, ne, si se Ligurem fecisset, nationis magis quam generis uti cognomine videretur—'qua de re mecum locutus es, quaerunt a me ubi sit pecunia.' Hic ille planus improbissimus, quaestu iudiciario pastus, qui illi pecuniae, quam condiderat, spe iam atque animo incubaret, contrahit frontem—recordamini faciem atque illos eius fictos simulatosque voltus—queritur se ab Oppianico destitutum, et, qui esset totus ex fraude et mendacio factus quique ea vitia, quae a natura habebat, etiam studio atque artificio quodam malitiae condisset, pulcre adseverat [sese ab Oppianico destitutum], atque hoc addit testimonii, sua illum sententia, cum palam omnes laturi essent, condemnatum iri.

XXVII. **73**. Manarat sermo in consilio pecuniae quandam mentionem inter iudices esse versatam. Res neque tam fuerat occulta quam erat occultanda neque tam erat aperta quam rei publicae causa aperienda. In ea obscuritate ac dubitatione omnium Cannutio, perito homini, qui quodam odore suspicionis Staienum corruptum esse sensisset nequedum rem perfectam arbitraretur, placuit repente pronuntiari: DIXERUNT. Hic tum Oppianicus non magno opere pertimuit: rem a Staieno perfectam esse arbitrabatur. **74**. In consilium erant ituri iudices XXXII. Sententiis XVI absolutio confici poterat. Quadragena milia nummum in singulos iudices distributa eum numerum sententiarum conficere debebant, ut ad cumulum spe maiorum praemiorum ipsius Staieni sententia septima decima accederet. Atque etiam casu tum, quod illud repente erat factum, Staienus ipse non aderat. Causam nescio quam apud iudicem defendebat. Facile hoc Habitus patiebatur, facile Cannutius: at non Oppianicus neque patronus eius L. Quinctius: qui cum esset illo tempore tribunus plebis, convicium C. Iunio iudici quaestionis maximum fecit, ut ne sine illo in consilium iretur: cumque id ei per viatores

DIXERUNT

consulto neglegentius agi videretur, ipse e publico iudicio ad privatum Staieni iudicium profectus est et illud pro potestate dimitti iussit: Staienum ipse ad subsellia adduxit. **75.** Consurgitur in consilium, cum sententias Oppianicus, quae tum erat potestas, palam ferri velle dixisset, ut Staienus scire posset quid cuique deberetur. Varia iudicum genera: nummarii pauci, sed omnes irati. Ut qui accipere in Campo consuerunt, eis candidatis, quorum nummos suppressos esse putant, inimicissimi solent esse, sic eius modi iudices infesti tum reo venerant: ceteri nocentissimum esse arbitrabantur, sed exspectabant sententias eorum, quos corruptos esse putabant, ut ex eis constituerent a quo iudicium corruptum videretur.

XXVIII. Ecce tibi eius modi sortitio, ut in primis Bulbo et Staieno et Guttae esset iudicandum. Summa omnium exspectatio quidnam sententiae ferrent leves ac nummarii iudices. Atque illi omnes sine ulla dubitatione condemnant. **76.** Hic tum iniectus est hominibus scrupulus et quaedam dubitatio quidnam esset actum. Deinde homines sapientes et ex vetere illa disciplina iudiciorum, qui neque absolvere hominem nocentissimum possent neque eum, de quo esset orta suspicio, pecunia oppugnatum, re illa incognita primo condemnare vellent, NON LIQUERE dixerunt. Nonnulli autem severi homines, qui hoc statuerunt, quo quisque animo quid faceret spectari oportere, etsi alii pecunia accepta verum iudicabant, tamen nihilo minus se superioribus suis iudiciis constare putabant oportere: itaque damnarunt. Quinque omnino fuerunt, qui illum vestrum innocentem Oppianicum sive imprudentia sive misericordia sive aliqua suspicione sive ambitione adducti absolverunt.

77. Condemnato Oppianico statim L. Quinctius, homo maxime popularis, qui omnes rumorum et contionum ventos colligere consuesset, oblatam sibi facultatem putavit, ut ex

invidia senatoria posset crescere, quod eius ordinis iudicia minus iam probari populo arbitrabatur. Habetur una atque altera contio vehemens et gravis: accepisse pecuniam iudices, ut innocentem reum condemnarent, tribunus plebis clamabat: agi fortunas omnium dicebat: nulla esse iudicia: qui pecuniosum inimicum haberet, incolumem esse neminem posse. Homines totius ignari negotii, qui Oppianicum numquam vidissent, virum optimum et hominem pudentissimum pecunia oppressum esse arbitrarentur, incensi suspicione rem in medium vocare coeperunt et causam illam totam deposcere. 78. Atque illo ipso tempore in aedes T. Anni, hominis honestissimi, necessarii et amici mei, noctu Staienus arcessitus ab Oppianico venit. Iam cetera nota sunt omnibus: ut cum illo Oppianicus egerit de pecunia, ut ille se redditurum esse dixerit, ut eum sermonem audierint omnem viri boni, qui tum consulto propter in occulto stetissent: ut res patefacta et in forum prolata et pecunia omnis Staieno extorta atque erepta sit.

XXIX. Huius Staieni persona populo iam nota atque perspecta ab nulla turpi suspicione abhorrebat: suppressam esse ab eo pecuniam, quam pro reo pronuntiasset, qui erant in contione, non intellegebant. Neque enim docebantur. Versatam esse in iudicio mentionem pecuniae sentiebant, innocentem reum condemnatum audiebant: Staieni sententia condemnatum videbant: non gratis id ab eo factum esse, quod hominem norant, iudicabant. Similis in Bulbo, in Gutta, in aliis non nullis suspicio consistebat. 79. Itaque confiteor—licet enim iam impune hoc praesertim in loco confiteri—, quod Oppianici non modo vita, sed etiam nomen ante illud tempus populo ignotum fuisset, indignissimum porro videretur circumventum esse innocentem pecunia, hanc deinde suspicionem augeret Staieni improbitas et non nullorum eius similium iudicum turpitudo, causam autem ageret L. Quinctius,

homo cum summa potestate tum ad inflammandos animos multitudinis accommodatus, summam illi iudicio invidiam infamiamque esse conflatam, atque in hanc flammam recentem tum C. Iunium, qui illi quaestioni praefuerat, esse iniectum memini, et illum hominem aedilicium, iam praetorem opinionibus hominum constitutum, non disceptatione dicendi, sed clamore de foro atque adeo de civitate esse sublatum.

80. Neque me paenitet hoc tempore potius quam illo causam A. Cluenti defendere. Causa enim manet eadem, quae mutari nullo modo potest, temporis iniquitas atque invidia recessit, ut, quod in tempore mali fuit, nihil obsit, quod in causa boni fuit, prosit. Itaque nunc quem ad modum audiar sentio, non modo ab eis, quorum iudicium ac potestas est, sed etiam ab illis, quorum tantum est existimatio. At tum si dicerem, non audirer, non quod alia res esset, immo eadem, sed tempus aliud.

XXX. Id adeo sic cognoscite. Quis tum auderet dicere nocentem condemnatum esse Oppianicum? quis nunc audet negare? Quis tum posset arguere ab Oppianico temptatum esse iudicium pecunia? quis id hoc tempore infitiari potest? Cui tum liceret docere Oppianicum reum factum esse tum denique, cum duobus proximis praeiudiciis condemnatus esset? quis est qui id hoc tempore infirmare conetur? **81.** Quare invidia remota, quam dies mitigavit, oratio mea deprecata est, vestra fides atque aequitas a veritatis disceptatione reiecit, quid est praeterea quod in causa relinquatur?

Versatam esse in iudicio pecuniam constat: ea quaeritur unde profecta sit, ab accusatore an ab reo. Dicit accusator haec: 'Primum gravissimis criminibus accusabam, ut nihil opus esset pecunia: deinde condemnatum adducebam, ut ne eripi quidem pecunia posset: postremo, etiamsi absolutus fuisset, mearum tamen omnium fortunarum status incolumis maneret.' Quid contra reus? 'Primum ipsam multitudinem

criminum et atrocitatem pertimescebam: deinde Fabriciis propter conscientiam mei sceleris condemnatis me esse condemnatum sentiebam: postremo in eum casum veneram, ut omnis mearum fortunarum status unius iudicii periculo contineretur.'

82. Age, quoniam corrumpendi iudicii causas ille multas et graves habuit, hic nullam, profectio ipsius pecuniae requiratur. Confecit tabulas diligentissime Cluentius. Haec autem res habet hoc certe, ut nihil possit neque additum neque detractum de re familiari latere. Anni sunt octo, cum ista causa in ista meditatione versatur, cum omnia, quae ad eam rem pertinent, et ex huius et ex aliorum tabulis agitatis, tractatis, inquiritis: cum interea Cluentianae pecuniae vestigium nullum invenitis. Quid, Albiana pecunia vestigiisne nobis odoranda est an ad ipsum cubile vobis indicibus venire possumus? Tenentur uno in loco HS $\overline{\text{IↃCXL}}$: tenentur apud hominem audacissimum: tenentur apud iudicem. **83.** Quid voltis amplius? At enim Staienus non fuit ab Oppianico, sed a Cluentio ad iudicium corrumpendum constitutus. Cur eum, cum in consilium iretur, Cluentius et Cannutius abesse patiebantur? cur cum in consilium mittebant, Staienum iudicem qui pecuniam dederant non requirebant? Oppianicus querebatur: Quinctius flagitabat: sine Staieno ne in consilium iretur, tribunicia potestate effectum est. At condemnavit. Hanc enim condemnationem dederat obsidem Bulbo et ceteris, ut destitutus ab Oppianico videretur. Quare si istinc causa corrumpendi iudicii, si istinc pecunia, istinc Staienus, istinc denique omnis fraus et audacia est, hinc pudor, honesta vita, nulla suspicio pecuniae, nulla corrumpendi iudicii causa, patimini veritate patefacta atque omni errore sublato eo transire illius turpitudinis infamiam, ubi cetera maleficia consistunt: ab eo invidiam discedere aliquando, ad quem numquam accessisse culpam videtis.

XXXI. 84. At enim pecuniam Staieno dedit Oppianicus non ad corrumpendum iudicium, sed ad conciliationem gratiae. Tene hoc, Acci, dicere, tali prudentia, etiam usu atque exercitatione praeditum? Sapientissimum esse dicunt eum, cui quod opus sit ipsi veniat in mentem: proxime accedere illum, qui alterius bene inventis obtemperet. In stultitia contra est. Minus enim stultus est is, cui nihil in mentem venit, quam ille, qui, quod stulte alteri venit in mentem, comprobat. Istam conciliationem gratiae Staienus tum recenti re, cum faucibus premeretur, excogitavit, sive, ut homines tum loquebantur, a P. Cethego admonitus. 85. Nam fuisse hunc tum hominum sermonem recordari potestis: Cethegum, quod hominem odisset et quod eius improbitatem versari in re publica nollet et quod videret eum, qui se ab reo pecuniam, cum iudex esset, clam atque extra ordinem accepisse confessus esset, salvum esse non posse, minus ei fidele consilium dedisse. In hoc si improbus Cethegus fuit, videtur mihi adversarium removere voluisse. Sin erat eius modi causa, ut Staienus nummos se accepisse negare non posset, nihil autem erat periculosius nec turpius quam ad quam rem accepisset confiteri, non est consilium Cethegi reprehendendum. 86. Verum alia causa tum Staieni fuit, alia nunc, Acci, tua est. Ille cum re premeretur, quodcumque diceret, honestius diceret, quam si, quod erat factum, fateretur: te vero illud idem, quod tum explosum et eiectum est, nunc rettulisse demiror. Qui enim poterat tum in gratiam redire cum Oppianico Cluentius? qui cum matre? Haerebat in tabulis publicis reus et accusator: condemnati erant Fabricii: nec elabi alio accusatore poterat Albius nec sine ignominia calumniae relinquere accusationem Cluentius.

XXXII. 87. An ut praevaricaretur? Iam id quoque ad corrumpendum iudicium pertinet. Sed quid opus erat ad eam rem iudice sequestre? et omnino quam ob rem tota ista

res per Staienum potius, hominem ab utroque alienissimum, sordidissimum, turpissimum, quam per bonum aliquem virum ageretur et amicum necessariumque communem? Sed quid ego haec pluribus quasi de re obscura disputo, cum ipsa pecunia, quae Staieno data est, numero ac summa sua non modo quanta fuerit, sed etiam ad quam rem fuerit ostendat? Sedecim dico iudices, ut Oppianicus absolveretur, corrumpendos fuisse: ad Staienum sescenta quadraginta milia nummum esse delata. Si, ut tu dicis, gratiae conciliandae causa, quadraginta istorum accessio milium quid valet? si, ut nos dicimus, ut quadragena milia sedecim iudicibus darentur, non Archimedes melius potuit discribere.

88. At enim iudicia facta permulta sunt, a Cluentio iudicium esse corruptum. Immo vero ante hoc tempus omnino ista ipsa res suo nomine in iudicium numquam est vocata. Ita multum agitata, ita diu iactata [ista res] est, ut hodierno die primum causa illa defensa sit, hodierno die primum veritas vocem contra invidiam his iudicibus freta miserit. Verum tamen ista multa iudicia quae sunt? Ego enim me ad omnia confirmavi et sic paravi, ut docerem, quae facta postea iudicia de illo iudicio dicerentur, partim ruinae similiora aut tempestati quam iudicio et disceptationi fuisse, partim nihil contra Habitum valere, partim etiam pro hoc esse, partim esse eius modi, ut neque appellata umquam iudicia sint neque existimata. **89.** Hic ego magis ut consuetudinem servem, quam quod vos non vestra hoc sponte faciatis, petam a vobis, ut me, dum de his singulis disputo iudiciis, attente audiatis.

XXXIII. Condemnatus est C. Iunius, qui ei quaestioni praefuerat: adde etiam illud, si placet: tum est condemnatus, cum esset iudex quaestionis. Non modo causae, sed ne legi quidem quicquam per tribunum plebis laxamenti datum est. Quo tempore illum a quaestione ad nullum aliud rei publicae munus abduci licebat, eo tempore ad quaestionem ipse

abreptus est. At ad quam quaestionem? Voltus enim vestri, iudices, me invitant, ut, quae reticenda putaram, libeat iam libere dicere. 90. Quid? illa tandem quaestio aut disceptatio aut iudicium fuit? Putabo fuisse. Dicat qui vult hodie de illo populo concitato, cui tum populo mos gestus est, qua de re Iunius causam dixerit: quemcumque rogaveris, hoc respondebit: quod pecuniam acceperit, quod innocentem circumvenerit. Est haec opinio. At, si ita esset, hac lege accusatum oportuit, qua accusatur Habitus. At ipse ea [lege] quaerebat. Paucos dies exspectasset Quinctius. At neque privatus accusare nec sedata invidia volebat. Videtis igitur non in causa, sed in tempore ac potestate spem omnem accusatoris fuisse. 91. Multam petivit. Qua lege? quod in legem non iurasset, quae res nemini umquam fraudi fuit, et quod C. Verres, praetor urbanus, homo sanctus et diligens, subsortitionem eius in eo codice non haberet, qui tum interlitus proferebatur. His de causis C. Iunius condemnatus est, iudices, levissimis et infirmissimis, quas omnino in iudicium adferri non oportuit. Itaque oppressus est, non causa, sed tempore.

XXXIV. 92. Hoc vos Cluentio iudicium putatis obesse oportere? Quam ob causam? Si ex lege subsortitus non erat Iunius aut si in aliquam legem aliquando non iuraverat, idcirco illius damnatione aliquid de Cluentio iudicabatur? 'Non,' inquit: 'sed ille idcirco illis legibus condemnatus est, quod contra aliam legem commiserat.' Qui hoc confitentur, possunt idem illud iudicium fuisse defendere? 'Ergo,' inquit, 'idcirco infestus tum populus Romanus fuit C. Iunio, quod illud iudicium corruptum per eum putabatur.' Num igitur hoc tempore causa mutata est? num alia res, alia ratio illius iudicii, alia natura totius negotii nunc est ac tum fuit? Non opinor ex eis rebus, quae gestae sunt, rem ullam potuisse mutari. 93. Quid ergo est causae quod nunc nostra defensio

audiatur tanto silentio, tum Iunio defendendi sui potestas erepta sit? Quia tum in causa nihil erat praeter invidiam, errorem, suspicionem, contiones cotidianas seditiose ac populariter concitatas. Accusabat tribunus plebis idem in contionibus, idem ad subsellia: ad iudicium non modo de contione, sed etiam cum ipsa contione veniebat. Gradus illi Aurelii tum novi quasi pro theatro illi iudicio aedificati videbantur: quos ubi accusator concitatis hominibus complerat, non modo dicendi ab reo, sed ne surgendi quidem potestas erat. **94.** Nuper apud C. Orchivium, collegam meum, locus ab iudicibus Fausto Sullae de pecuniis residuis non est constitutus, non quo illi aut exlegem esse Sullam aut causam pecuniae publicae contemptam atque abiectam putarent, sed quod accusante tribuno plebis condicione aequa disceptari posse non putarunt. Quid conferam? Sullamne cum Iunio? an hunc tribunum plebis cum Quinctio? an vero tempus cum tempore? Sulla maximis opibus, cognatis, adfinibus, necessariis, clientibus plurimis: haec autem apud Iunium parva et infirma et ipsius labore quaesita atque collecta. Hic tribunus plebis modestus, pudens, non modo non seditiosus, sed etiam seditiosis adversarius: ille autem acerbus, criminosus, popularis homo ac turbulentus. Tempus hoc tranquillum atque placatum: illud omnibus invidiae tempestatibus concitatum. Quae cum ita essent, in Fausto tamen illi iudices statuerunt, iniqua condicione reum causam dicere, cum adversario eius ad ius accusationis summa vis potestatis accederet.

XXXV. **95.** Quam quidem rationem vos, iudices, diligenter pro vestra sapientia [et humanitate] cogitare et penitus perspicere debetis, quid mali, quantum periculi uni cuique nostrum inferre possit vis tribunicia, conflata praesertim invidia et contionibus seditiose concitatis. Optimis hercule temporibus, tum, cum homines se non iactatione populari, sed dignitate atque innocentia tuebantur, tamen nec P.

Popilius neque Q. Metellus, clarissimi viri atque amplissimi, vim tribuniciam sustinere potuerunt: nedum his temporibus, his moribus, his magistratibus, sine vestra sapientia ac sine iudiciorum remediis salvi esse possimus. **96.** Non fuit illud igitur iudicium iudicii simile, iudices, non fuit, in quo non modus ullus est adhibitus, non mos consuetudoque servata, non causa defensa: vis illa fuit et, ut saepe iam dixi, ruina quaedam atque tempestas et quidvis potius quam iudicium aut disceptatio aut quaestio. Quod si quis est qui illud iudicium fuisse arbitretur et qui his rebus iudicatis standum putet, is tamen hanc causam ab illa debet seiungere. Ab illo enim, sive quod in legem non iurasset sive quod e lege subsortitus iudicem non esset, multa petita esse dicitur. Cluenti autem ratio cum illis legibus, quibus a Iunio multa petita est, nulla potest ex parte esse coniuncta. **97.** At enim etiam Bulbus est condemnatus. Adde maiestatis, ut intellegas hoc iudicium cum illo non esse coniunctum. At est hoc illi crimen obiectum. Fateor, sed etiam legionem esse ab eo sollicitatam in Illyrico C. Cosconi litteris et multorum testimoniis planum factum est: quod crimen erat proprium illius quaestionis et quae res lege maiestatis tenebatur. At hoc obfuit ei maxime. Iam ista divinatio est: qua si uti licet, vide ne mea coniectura multo sit verior. Ego enim sic arbitror, Bulbum, quod homo nequam, turpis, improbus, multis flagitiis contaminatus in iudicium sit adductus, idcirco facilius esse damnatum. Tu mihi ex tota causa Bulbi, quod tibi commodum est, eligis, ut id esse secutos iudices dicas.

XXXVI. **98.** Quapropter hoc Bulbi iudicium non plus huic obesse causae debet quam illa, quae commemorata sunt ab accusatore, duo iudicia, P. Popili et Ti. Guttae, qui causam de ambitu dixerunt, qui accusati sunt ab eis, qui erant ipsi ambitus condemnati: quos ego non idcirco esse arbitror in

integrum restitutos, quod planum fecerint illos ob rem iudicandam pecuniam accepisse, sed quod iudicibus probaverint, cum in eodem genere, in quo ipsi offendissent, alios reprehendissent, se ad praemia legis venire oportere. Quapropter neminem dubitare existimo quin illa damnatio ambitus nulla ex parte cum causa Cluenti vestroque iudicio coniuncta esse possit. **99**. Quid, quod Staienus est condemnatus? Non dico hoc tempore, iudices, id quod nescio an dici oporteat, illum maiestatis esse condemnatum: non recito testimonia hominum honestissimorum, quae in Staienum sunt dicta ab eis, qui Mam. Aemilio, clarissimo viro, legati et praefecti et tribuni militares fuerunt: quorum testimoniis planum factum est maxime eius opera, cum quaestor esset, in exercitu seditionem esse conflatam. Ne illa quidem testimonia recito, quae dicta sunt, de HS IↃC, quae ille cum accepisset nomine iudicii Safiniani, sicut in Oppianici iudicio postea, reticuit atque suppressit. **100**. Omitto et haec et alia permulta, quae illo iudicio in Staienum dicta sunt: hoc dico, eandem tum fuisse P. et L. Cominiis, equitibus Romanis, honestis hominibus et disertis, controversiam cum Staieno, quem accusabant, quae nunc mihi est cum Accio. Cominii dicebant idem, quod ego dico: Staienum ab Oppianico pecuniam accepisse, ut iudicium corrumperet: Staienus conciliandae gratiae causa accepisse dicebat. **101**. Irridebatur haec illius reconciliatio et persona viri boni suscepta, sicut in statuis inauratis, quas posuit ad Iuturnae: quibus subscripsit reges a se in gratiam esse reductos. Exagitabantur eius omnes fraudes atque fallaciae, tota vita in eius modi ratione versata aperiebatur, egestas domestica, quaestus forensis in medium proferebatur, nummarius interpres pacis et concordiae non probabatur. Itaque tum Staienus, cum idem defenderet quod Accius, condemnatus est. **102**. Cominii cum hoc agerent, quod nos in tota causa egimus, probaverunt. Quam ob rem si Staieni

damnatione Oppianicum iudicium corrumpere voluisse, Oppianicum iudici ad emendas sententias dedisse pecuniam iudicatum est: cum ita constitutum sit, ut in illa culpa aut Cluentius sit aut Oppianicus, Cluenti nummus nullus iudici datus ullo vestigio reperietur, Oppianici pecunia post iudicium factum ab iudice ablata est: potest esse dubium, quin illa damnatio Staieni non modo non sit contra Cluentium, sed maxime nostram causam defensionemque confirmet?

XXXVII. **103**. Ergo adhuc Iuni iudicium video esse eius modi, ut incursionem potius seditionis, vim multitudinis, impetum tribunicium, quam iudicium appellandum putem. Quod si qui illud iudicium appellet, tamen hoc confiteatur necesse est, nullo modo illam multam, quae ab Iunio petita sit, cum Cluenti causa posse coniungi. Illud igitur Iunianum per vim factum est, Bulbi et Popili et Guttae contra Cluentium non est: Staieni etiam pro Cluentio est. Videamus ecquod aliud iudicium, quod pro Cluentio sit, proferre possimus.

Dixitne tandem causam C. Fidiculanius Falcula, qui Oppianicum condemnarat, cum praesertim, id quod fuit in illo iudicio invidiosissimum, paucos dies ex subsortitione sedisset? Dixit et bis quidem dixit. In summam enim L. Quinctius invidiam contionibus eum cotidianis seditiosis et turbulentis adduxerat. Uno iudicio multa est ab eo petita, sicut ab Iunio, quod non suae decuriae munere neque ex lege sedisset. Paulo sedatiore tempore est accusatus, quam Iunius, sed eadem fere lege et crimine. Quia nulla in iudicio seditio neque vis nec turba versata est, prima actione facillime est absolutus. Non numero hanc absolutionem. Nihilo minus enim potest, ut illam multam non commiserit, accepisse tamen ob rem iudicandam. *Causam nusquam Staienus ea de re lege dixit. Proprium crimen illud quaestionis eius non fuit. **104**. Fidiculanius quid fecisse dicebatur? accepisse a Cluentio HS $\overline{\text{cccc}}$. Cuius erat ordinis? senatorii. Qua lege in

eo genere a senatore ratio repeti solet, de pecuniis repetundis, ea lege accusatus honestissime est absolutus. Acta est enim causa more maiorum, sine vi, sine metu, sine periculo: dicta et exposita et demonstrata sunt omnia. Adducti iudices sunt non modo potuisse honeste ab eo reum condemnari, qui non perpetuo sedisset, sed, aliud si is iudex nihil scisset, nisi quae praeiudicia de eo facta esse constarent, audire praeterea nihil debuisse.

XXXVIII. **105**. Tum etiam illi quinque, qui, imperitorum hominum rumusculos aucupati tum illum absolverunt, iam suam clementiam laudari magno opere nolebant, a quibus si qui quaereret sedissentne iudices in C. Fabricium, sedisse se dicerent: si interrogarentur num quo crimine is esset accusatus praeterquam veneni eius, quod quaesitum Habito diceretur, negarent: si deinde essent rogati quid iudicassent, condemnasse se dicerent: nemo enim absolvit. Eodem modo quaesitum si esset de Scamandro, certe idem respondissent: tametsi ille una sententia est absolutus, sed illam unam nemo tum istorum suam dici vellet. **106**. Uter igitur facilius suae sententiae rationem redderet: isne, qui se et sibi et rei iudicatae constitisse dicit, an ille, qui se in principem maleficii lenem, in adiutores eius et conscios vehementissimum esse respondet? Quorum ego de sententia non debeo disputare: neque enim dubito quin tales viri suspicione aliqua perculsi repentina de statu suo declinarint. Quare eorum, qui absolverunt, misericordiam non reprehendo, eorum, qui in iudicando superiora iudicia secuti sunt sua sponte, non Staieni fraude, constantiam comprobo, eorum vero, qui sibi non liquere dixerunt, sapientiam laudo, qui absolvere eum, quem nocentissimum cognorant, et quem ipsi bis antea condemnarant, nullo modo poterant: condemnare, cum tanta consilii infamia et tam atrocis rei suspicio esset iniecta, paulo posterius patefacta re maluerunt. **107**. Ac ne ex facto solum

sapientes illos iudicetis, sed etiam ex hominibus ipsis quod hi fecerunt, rectissime ac sapientissime factum probetis, quis P. Octavio Balbo ingenio prudentior, iure peritior, fide, religione, officio diligentior aut sanctior commemorari potest? Non absolvit. Quis Q. Considio constantior? quis iudiciorum atque eius dignitatis, quae in iudiciis publicis versari debet, peritior? quis virtute, consilio, auctoritate praestantior? Ne is quidem absolvit. Longum est de singulorum virtute [ita] dicere: quae, quia cognita est ab omnibus, verborum ornamenta non quaerit. Qualis vir M. Iuventius Pedo fuit ex vetere illa iudicum disciplina? qualis L. Caulius Mergus? M. Basilus? C. Caudinus? qui omnes in iudiciis publicis iam tum, florente re publica, floruerunt. Ex eodem numero L. Cassius, Cn. Heius, pari et integritate et prudentia: quorum nullius sententia est Oppianicus absolutus. Atque in his omnibus natu minimus, ingenio et diligentia et religione par eis, quos antea commemoravi, P. Saturius, in eadem sententia fuit. **108.** O innocentiam Oppianici singularem! quo in reo, qui absolvit ambitiosus, qui distulit cautus, qui condemnavit constans existimatur.

XXXIX. Haec tum agente Quinctio neque in contione neque in iudicio demonstrata sunt. Neque enim ipse dici patiebatur nec per multitudinem concitatam consistere cuiquam in dicendo licebat. Itaque ipse postquam Iunium pervertit, totam causam reliquit. Paucis enim diebus illis et ipse privatus est factus et hominum studia defervisse intellegebat. Quod si per quos dies Iunium accusavit Fidiculanium accusare voluisset, respondendi Fidiculanio potestas facta non esset. Ac primo quidem omnibus illis iudicibus, qui Oppianicum condemnarant, minabatur. **109.** Iam insolentiam noratis hominis: noratis animos eius ac spiritus tribunicios. Quod erat odium, di immortales! quae superbia! quanta ignoratio sui! quam gravis atque intolerabilis adrogantia! qui

illud iam ipsum acerbe tulerit, ex quo illa nata sunt omnia, non sibi ac defensioni suae condonatum esse Oppianicum: proinde quasi non satis signi esse debuerit ab omnibus eum fuisse desertum, qui se ad patronum illum contulisset. Erat enim Romae summa copia patronorum, hominum eloquentissimorum atque amplissimorum, quorum certe aliquis defendisset equitem Romanum, in municipio suo nobilem, si honeste putasset eius modi causam posse defendi.

XL. **110**. Nam Quinctius quidem quam causam umquam antea dixerat, cum annos ad quinquaginta natus esset? quis eum umquam non modo in patroni, sed in laudatoris aut advocati loco viderat? qui quod Rostra iam diu vacua locumque illum post adventum L. Sullae a tribunicia voce desertum oppresserat, multitudinemque desuefactam iam a contionibus ad veteris consuetudinis similitudinem revocarat, idcirco cuidam hominum generi paulisper iucundior fuit. Atque idem quanto in odio postea suis ipsis fuit, per quos in altiorem locum ascenderat! neque iniuria. **111**. Facite enim ut non solum mores et adrogantiam eius, sed etiam voltum atque amictum atque etiam illam usque ad talos demissam purpuram recordemini. Is, quasi non esset ullo modo ferendum se ex iudicio discessisse victum, rem a subselliis ad Rostra detulit. Et iam querimur saepe hominibus novis non satis magnos in hac civitate esse fructus? Nego usquam umquam fuisse maiores, ubi si quis ignobili loco natus ita vivit, ut nobilitatis dignitatem virtute tueri posse videatur, usque eo pervenit, quoad eum industria cum innocentia prosecuta est. **112**. Si quis autem hoc uno nititur, quod sit ignobilis, procedit saepe longius, quam si idem ille esset cum isdem suis vitiis nobilissimus. Ut Quinctius —nihil enim dicam de ceteris—si fuisset homo nobilis, quis eum cum illa superbia atque intolerantia ferre potuisset? Quod eo loco fuit, ita tulerunt, ut, si quid haberet a natura boni, prodesse ei putarent oportere: superbiam autem atque

adrogantiam eius deridendam magis arbitrarentur propter humilitatem hominis quam pertimescendam.

XLI. Sed, ut illuc revertar, quo tempore Fidiculanius absolutus est, tu, qui iudicia facta commemoras, quaero, quid tum esse existimas iudicatum? certe gratis iudicasse. **113.** At condemnarat: at causam totam non audierat: at in contionibus a L. Quinctio vehementer erat et saepe vexatus. Illa igitur omnia Quinctiana iniqua, falsa, turbulenta, popularia, seditiosa iudicia fuerunt. Esto: potuit esse innocens Falcula. Iam ergo aliqui Oppianicum gratis condemnavit: iam non eos Iunius subsortitus est, qui pecunia accepta condemnarent: iam putabitur aliqui ab initio non sedisse et tamen Oppianicum gratis condemnasse. Verum, si innocens Falcula, quaero qui sit nocens? si hic gratis condemnavit, quis accepit? Nego rem esse ullam cuiquam illorum obiectam, quae Fidiculanio non obiecta sit, aliquid fuisse in Fidiculani causa, quod idem non esset in ceterorum. **114.** Aut hoc iudicium reprehendas tu, cuius accusatio rebus iudicatis nitebatur, necesse est, aut, si hoc verum esse concedis, Oppianicum gratis condemnatum esse fateare.

Quamquam satis magno argumento esse debet, quod ex tam multis iudicibus absoluto Falcula nemo reus factus est. Quid enim mihi damnatos ambitus colligitis, alia lege, certis criminibus, plurimis testibus? cum primum illi ipsi debuerint potius accusari de pecuniis repetundis quam ambitus. Nam si in ambitus iudiciis hoc eis obfuit, cum alia lege causam dicerent, certe, si propria lege huius peccati adducti essent, multo plus obfuisset. **115.** Deinde si tanta vis fuit istius criminis, ut, qua quisque lege ex illis iudicibus reus factus esset, tamen hac plaga periret, cur in tanta multitudine accusatorum, tantis praemiis, ceteri rei facti non sunt? Hic profertur id, quod iudicium appellari non oportet, P. Septimio Scaevolae litem eo nomine esse aestimatam. Cuius rei quae

consuetudo sit, quoniam apud homines peritissimos dico, pluribus verbis docere non debeo. Numquam enim ea diligentia, quae solet adhiberi in ceteris iudiciis, eadem reo damnato adhibita est. **116.** In litibus aestimandis fere iudices aut, quod sibi eum, quem semel condemnarunt, inimicum putant esse, si quae in eum lis capitis illata est, non admittunt, aut, quod se perfunctos iam esse arbitrantur, cum de reo iudicarunt, neglegentius attendunt cetera. Itaque et maiestatis absoluti sunt permulti, quibus damnatis de pecuniis repetundis lites maiestatis essent aestimatae, et hoc cotidie fieri videmus, ut reo damnato de pecuniis repetundis, ad quos pervenisse pecunias in litibus aestimandis statutum sit, eos idem iudices absolvant: quod cum fit, non iudicia rescinduntur, sed hoc statuitur, aestimationem litium non esse iudicium. Scaevola condemnatus est aliis criminibus, frequentissimis Apuliae testibus. Omni contentione pugnatum est, uti lis haec capitis aestimaretur. Quae res si rei iudicatae pondus habuisset, ille postea vel isdem vel aliis inimicis reus hac lege ipsa factus esset.

XLII. **117.** Sequitur id, quod illi iudicium appellant, maiores autem nostri numquam neque iudicium nominarunt neque proinde ut rem iudicatam observarunt, animadversionem atque auctoritatem censoriam. Qua de re ante quam dicere incipio, perpauca mihi de meo officio verba faciunda sunt, ut a me cum huiusce periculi tum ceterorum quoque officiorum et amicitiarum ratio conservata esse videatur. Nam mihi cum viris fortibus, qui censores proxime fuerunt, ambobus est amicitia, cum altero vero, sicuti plerique vestrum sciunt, magnus usus et summa utriusque officiis constituta necessitudo. **118.** Quare quicquid de subscriptionibus eorum mihi dicendum erit, eo dicam animo, ut omnem orationem meam non de illorum facto, sed de ratione censoria habitam existimari velim: a Lentulo autem, familiari meo, qui

a me pro eximia sua virtute summisque honoribus, quos a populo Romano adeptus est, honoris causa nominatur, facile hoc, iudices, impetrabo, ut, quam ipse adhibere consuevit in amicorum periculis cum fidem et diligentiam tum vim animi libertatemque dicendi, ex hac mihi concedat ut tantum mihi sumam, quantum sine huius periculo praeterire non possim. A me tamen, ut aequum est, omnia caute pedetemptimque dicentur, ut neque fides huius defensionis relicta neque cuiusquam aut dignitas laesa aut amicitia violata esse videatur.

119. Video igitur, iudices, animadvertisse censores in iudices quosdam illius consilii Iuniani, cum istam ipsam causam subscriberent. Hic illud primum commune proponam, numquam animadversionibus censoriis hanc civitatem ita contentam ut rebus iudicatis fuisse. Neque in re nota consumam tempus. Exempli causa ponam unum illud: C. Getam, cum a L. Metello et Cn. Domitio censoribus ex senatu eiectus esset, censorem esse ipsum postea factum: et cuius mores erant a censoribus reprehensi, hunc postea et populi Romani et eorum, qui in ipsum animadverterant, moribus praefuisse. Quod si illud iudicium putaretur, ut ceteri turpi iudicio damnati in perpetuum omni honore ac dignitate priventur, sic hominibus ignominia notatis neque ad honorem aditus neque in curiam reditus esset. **120**. Nunc si quem Cn. Lentuli aut L. Gelli libertus furti condemnarit, is omnibus ornamentis amissis numquam ullam honestatis suae partem reciperabit: quos autem ipse L. Gellius et Cn. Lentulus, duo censores, clarissimi viri sapientissimique homines, furti et captarum pecuniarum nomine notaverunt, ei non modo in senatum redierunt, sed etiam illarum ipsarum rerum iudiciis absoluti sunt.

XLIII. Neminem voluerunt maiores nostri non modo de existimatione cuiusquam, sed ne pecuniaria quidem de re minima esse iudicem, nisi qui inter adversarios convenisset.

Quapropter in omnibus legibus, quibus exceptum est, de quibus causis aut magistratum capere non liceat aut iudicem legi aut alterum accusare, haec ignominiae causa praetermissa est. Timoris enim causam, non vitae poenam in illa potestate esse voluerunt. **121.** Itaque non solum illud ostendam, quod iam videtis, populi Romani suffragiis saepe numero censorias subscriptiones esse sublatas, verum etiam iudiciis eorum, qui iurati statuere maiore cum religione et diligentia debuerunt. Primum iudices, senatores equitesque Romani in compluribus iam reis, quos contra leges pecunias accepisse subscriptum est, suae potius religioni quam censorum opinioni paruerunt. Deinde praetores urbani, qui iurati debent optimum quemque in lectos iudices referre, sibi nunquam ad eam rem censoriam ignominiam impedimento esse oportere duxerunt. **122.** Censores denique ipsi saepe numero superiorum censorum iudiciis, si ista iudicia appellare voltis, non steterunt. Atque etiam ipsi inter se censores sua iudicia tanti esse arbitrantur, ut alter alterius iudicium non modo reprehendat, sed etiam rescindat: ut alter de senatu movere velit, alter retineat et ordine amplissimo dignum existimet: ut alter in aerarios referre aut tribu movere iubeat, alter vetet. Quare qui vobis in mentem venit haec appellare iudicia, quae a populo rescindi, ab iuratis iudicibus repudiari, a magistratibus neglegi, ab eis, qui eandem potestatem adepti sunt, commutari, inter collegas discrepare videatis?

XLIV. **123.** Quae cum ita sint, videamus quid tandem censores de illo iudicio corrupto iudicasse dicantur. Ac primum illud statuamus, utrum quia censores subscripserint ita sit, an, quia ita fuerit, illi subscripserint. Si quia subscripserint, videte quid agatis, ne in unum quemque nostrum censoribus in posterum potestatem regiam permittatis: ne subscriptio censoria non minus calamitatis civibus quam illa acerbissima proscriptio possit adferre: ne censorium stilum,

point or edge

cuius mucronem multis remediis maiores nostri rettuderunt, aeque posthac atque illum dictatorium pertimescamus. **124.** Sin autem, quod subscriptum est, quia verum est, idcirco grave debet esse, hoc quaeramus, verum sit an falsum: removeantur auctoritates censoriae: tollatur id ex causa, quod in causa non est: doce quam pecuniam Cluentius dederit, unde dederit, quem ad modum dederit: unum denique a Cluentio profectae pecuniae vestigium ostende. Vince deinde bonum virum fuisse Oppianicum, hominem integrum, nihil de illo umquam secus esse existimatum, nihil denique praeiudicatum. Tum auctoritatem censoriam amplexato: tum illorum iudicium coniunctum cum re esse defendito. **125.** Dum vero eum fuisse Oppianicum constabit, qui tabulas publicas municipii manu sua corrupisse iudicatus sit, qui testamentum interleverit, qui supposita persona falsum testamentum obsignandum curaverit, qui eum, cuius nomine id obsignatum est, interfecerit, qui avunculum filii sui in servitute ac vinculis necaverit, qui municipes suos proscribendos occidendosque curaverit, qui eius uxorem, quem occiderat, in matrimonium duxerit, qui pecuniam pro abortione dederit, qui socrum, qui uxores, qui uno tempore fratris uxorem speratosque liberos fratremque ipsum, qui denique suos liberos interfecerit, qui cum venenum privigno suo dare vellet, manifesto deprehensus sit, cuius ministris consciisque damnatis ipse adductus in iudicium pecuniam iudici dederit ad sententias iudicum corrumpendas: dum haec, inquam, de Oppianico constabunt, neque ullo argumento Cluentianae pecuniae crimen tenebitur, quid est quod te ista censoria, sive voluntas sive opinio fuit, adiuvare aut hunc innocentem opprimere posse videatur?

XLV. **126.** Quid igitur censores secuti sunt? ne ipsi quidem, ut gravissime dicam, quicquam aliud dicent praeter sermonem atque famam. Nihil se testibus, nihil tabulis, nihil aliquo gravi argumento comperisse, nihil denique causa cognita

statuisse dicent. Quod si ita fecissent, tamen id non ita fixum esse deberet, ut convelli non liceret. Non utar exemplorum copia, quae summa est, non rem veterem, non hominem potentem aliquem aut gratiosum proferam. Nuper hominem tenuem, scribam aedilicium, D. Matrinium, cum defendissem apud M. Iunium Q. Publicium praetores et M. Plaetorium C. Flaminium aediles curules, persuasi, ut scribam iurati legerent eum, quem idem isti censores aerarium reliquisse subscripserunt. Cum enim in homine nulla culpa inveniretur, quid ille meruisset, non quid de eo statutum esset quaerendum esse duxerunt. **127**. Nam haec quidem, quae de iudicio corrupto subscripserunt, quis est qui ab illis satis cognita et diligenter iudicata arbitretur? In M'. Aquilium et in Ti. Guttam video esse subscriptum. Quid est hoc? duos esse corruptos solos pecunia dicant: ceteri videlicet gratis condemnarunt. Non est igitur circumventus, non oppressus pecunia, non, ut illae Quinctianae contiones habebantur, omnes, qui Oppianicum condemnarunt, in culpa sunt ac suspicione ponendi: duos solos video auctoritate censorum adfines ei turpitudini iudicari. Aut illud adferant, aliquid sese, quod de his duobus habuerint compertum, de ceteris *non* comperisse.

XLVI. **128**. Nam illud quidem minime probandum est, ad notationes auctoritatemque censoriam exemplum illos e consuetudine militari transtulisse. Statuerunt enim ita maiores nostri, ut, si a multis esset flagitium rei militaris admissum, sortito in quosdam animadverteretur, ut metus videlicet ad omnes, poena ad paucos perveniret. Quod idem facere censores in delectu dignitatis et in iudicio civium et in animadversione vitiorum qui convenit? Nam miles, qui locum non tenuit, qui hostium impetum vimque pertimuit, potest idem postea et miles esse melior et vir bonus et civis utilis. Quare qui in bello propter hostium metum deliquerat, amplior

ei mortis et supplicii metus est a maioribus constitutus: ne autem nimium multi poenam capitis subirent, idcirco illa sortitio comparata est. **129**. Hoc tu idem facies censor in senatu legendo? Si erunt plures, qui ob innocentem condemnandum pecuniam acceperint, tu non animadvertes in omnes, sed carpes, ut velis, et paucos ex multis ad ignominiam sortiere? Habebit igitur te sciente et vidente curia senatorem, populus Romanus iudicem, res publica civem sine ignominia quemquam, qui ad perniciem innocentis fidem suam et religionem pecunia commutarit? et, qui pretio adductus eripuerit patriam, fortunas, liberos civi innocenti, is censoriae severitatis nota non inuretur? Tu es praefectus moribus, tu magister veteris disciplinae ac severitatis, si aut retines quemquam sciens in senatu scelere tanto contaminatum aut statuis, qui in eadem culpa sit, non eadem poena adfici convenire? Aut quam condicionem supplicii maiores in bello timiditati militis propositam esse voluerunt, eandem tu in pace constitues improbitati senatoris? Quod si hoc exemplum ex re militari ad animadversionem censoriam transferendum fuit, sortitione id ipsum factum esse oportuit. Sin autem sortiri ad poenam et hominum delictum fortunae iudicio committere minime censorium est, certe in multorum peccato carpi paucos ad ignominiam non oportet.

XLVII. **130**. Verum omnes intellegimus in istis subscriptionibus ventum quendam popularem esse quaesitum. Iactata res erat in contione: incognita causa probatum erat illud multitudini: nemini licitum est contra dicere: nemo denique, ut defenderet contrariam partem, laborabat. In invidiam porro magnam illa iudicia venerant. Etenim paucis postea mensibus alia vehemens erat in iudiciis ex notatione tabellarum invidia versata. Praetermitti ab censoribus et neglegi macula iudiciorum posse non videbatur. Homines, quos ceteris vitiis atque omni dedecore infames videbant, eos

hac quoque subscriptione notare voluerunt, et eo magis, quod illo ipso tempore illis censoribus erant iudicia cum equestri ordine communicata, ut viderentur per hominum idoneorum ignominiam sua auctoritate illa iudicia reprehendisse. **131.** Quod si hanc apud eosdem ipsos censores mihi aut alii causam agere licuisset, hominibus tali prudentia praeditis certe probavissem: res enim indicat nihil ipsos habuisse cogniti, nihil comperti: ex tota ista subscriptione rumorem quendam et plausum popularem esse quaesitum. Nam in P. Popilium, qui Oppianicum condemnarat, subscripsit L. Gellius, q u o d i s p e c u n i a m a c c e p i s s e t, q u o i n n o c e n t e m c o n d e m n a r e t. Iam id ipsum quantae divinationis est scire innocentem fuisse reum, quem fortasse numquam viderat, cum homines sapientissimi, iudices, ut nihil dicam de eis, qui condemnarunt, causa cognita sibi dixerunt non liquere!

132. Verum esto: condemnat Popilium Gellius: iudicat accepisse a Cluentio pecuniam. Negat hoc Lentulus. Nam Popilium, quod erat libertini filius, in senatum non legit, locum quidem senatorium ludis et cetera ornamenta reliquit et eum omni ignominia liberat. Quod cum facit, iudicat eius sententia gratis esse Oppianicum condemnatum. Et eundem Popilium postea Lentulus in ambitus iudicio pro testimonio diligentissime laudat. Quare si neque L. Gelli iudicio stetit Lentulus neque Lentuli existimatione contentus fuit Gellius, et si uterque censor censoris opinione standum non putavit, quid est quam ob rem quisquam nostrum censorias subscriptiones omnes fixas et in perpetuum ratas putet esse oportere?

XLVIII. **133.** At in ipsum Habitum animadverterunt. Nullam quidem ob turpitudinem, nullum ob totius vitae non dicam vitium, sed erratum. Neque enim hoc homine sanctior neque probior neque in omnibus officiis retinendis diligentior esse quisquam potest: neque illi aliter dicunt, sed eandem

illam famam iudicii corrupti secuti sunt: neque ipsi secus existimant quam nos existimari volumus de huius pudore, integritate, virtute: sed putarunt praetermitti accusatorem non posse, cum animadversum esset in iudices. Qua de re si unum factum ex omni antiquitate protulero, plura non dicam. **134**. Non enim mihi exemplum summi et clarissimi viri, P. Africani, praetereundum videtur: qui cum esset censor et in equitum censu C. Licinius Sacerdos prodisset, clara voce, ut omnis contio audire possit, dixit se scire illum verbis conceptis peierasse: si qui contra vellet dicere, usurum esse eum suo testimonio: deinde cum nemo contra diceret, iussit equum traducere. Ita is, cuius arbitrio et populus Romanus et exterae gentes contentae esse consuerant, ipse sua scientia ad ignominiam alterius contentus non fuit. Quod si hoc Habito facere licuisset, facile illis ipsis iudicibus et falsae suspicioni et invidiae populariter excitatae restitisset.

135. Unum etiam est, quod me maxime perturbat, cui loco respondere vix videor posse, quod elogium recitasti de testamento Cn. Egnati patris, hominis honestissimi videlicet et sapientissimi: idcirco se exheredasse filium, quod is ob Oppianici condemnationem pecuniam accepisset. De cuius hominis levitate et inconstantia plura non dicam: hoc testamentum ipsum, quod recitas, eius modi est, ut ille, cum eum filium exheredaret, quem oderat, ei filio coheredes homines alienissimos adiungeret, quem diligebat. Sed tu, Acci, consideres censeo diligenter, utrum censorium iudicium grave velis esse an Egnati. Si Egnati, leve est, quod censores de ceteris subscripserunt: ipsum enim Cn. Egnatium, quem tu gravem esse vis, ex senatu eiecerunt: sin autem censorum, hunc Egnatium, quem pater censoria subscriptione exheredavit, censores in senatu, cum patrem eicerent, retinuerunt.

XLIX. **136**. At enim senatus universus iudicavit illud corruptum esse iudicium. Quo modo? Suscepit causam. An

potuit rem delatam eius modi repudiare? cum tribunus plebis populo concitato rem paene ad manus revocasset, cum vir optimus et homo innocentissimus pecunia circumventus diceretur, cum invidia flagraret ordo senatorius, potuit nihil decerni? potuit illa concitatio multitudinis sine summo periculo rei publicae repudiari? At quid est decretum? quam iuste! quam sapienter! quam diligenter! SI QUI SUNT, QUORUM OPERA FACTUM SIT, UT IUDICIUM PUBLICUM CORRUMPERETUR. Utrum videtur id senatus factum iudicare, an, si factum sit, moleste graviterque ferre? Si ipse A. Cluentius sententiam de iudiciis rogaretur, aliam non diceret, atque ei dixerunt, quorum sententiis Cluentium condemnatum esse dicitis. **137.** Sed quaero a vobis num istam legem ex isto senatus consulto L. Lucullus consul, homo sapientissimus, tulerit: num anno post M. Lucullus et C. Cassius, in quos tum consules designatos idem illud senatus decreverat? Non tulerunt: et quod tu Habiti pecunia factum esse arguis neque id ulla tenuissima suspicione confirmas, factum est primum illorum aequitate et sapientia consulum, ut id, quod senatus decreverat ad illud invidiae praesens incendium restinguendum, id postea referendum ad populum non arbitrarentur. Ipse deinde populus Romanus, qui L. Quincti fictis querimoniis antea concitatus rem illam et rogationem flagitarat, idem C. Iuni filii, pueri parvuli, lacrimis commotus, maximo clamore et concursu totam quaestionem illam et legem repudiavit. **138.** Ex quo intellegi potuit id, quod saepe dictum est: ut mare, quod sua natura tranquillum sit, ventorum vi agitari atque turbari, sic populum Romanum sua sponte esse placatum, hominum seditiosorum vocibus ut violentissimis tempestatibus concitari.

L. Est etiam reliqua permagna auctoritas, quam ego turpiter paene praeterii: mea enim esse dicitur. Recitavit ex oratione nescio qua Accius, quam meam esse dicebat, cohortationem quandam iudicum ad honeste iudicandum et commemoratio-

nem cum aliorum iudiciorum, quae probata non essent, tum illius ipsius iudicii Iuniani: proinde quasi ego non ab initio huius defensionis dixerim invidiosum illud iudicium fuisse, aut, cum de infamia iudiciorum disputarem, potuerim illud, quod tam populare esset, illo tempore praeterire. **139.** Ego vero, si quid eius modi dixi, neque cognitum commemoravi neque pro testimonio dixi, et illa oratio potius temporis mei quam iudicii et auctoritatis fuit. Cum enim accusarem et mihi initio proposuissem, ut animos et populi Romani et iudicum commoverem, cumque omnes offensiones iudiciorum non ex mea opinione, sed ex hominum rumore proferrem, istam rem, quae tam populariter esset agitata, praeterire non potui. Sed errat vehementer, si quis in orationibus nostris, quas in iudiciis habuimus, auctoritates nostras consignatas se habere arbitratur. Omnes enim illae causarum ac temporum sunt, non hominum ipsorum aut patronorum. Nam si causae ipsae pro se loqui possent, nemo adhiberet oratorem. Nunc adhibemur, ut ea dicamus, non quae nostra auctoritate constituantur, sed quae ex re ipsa causaque ducantur. **140.** Hominem ingeniosum, M. Antonium, aiunt solitum esse dicere i d c i r c o s e n u l l a m u m q u a m o r a t i o n e m s c r i p s i s s e, u t, s i q u i d a l i q u a n d o n o n o p u s e s s e t a b s e e s s e d i c t u m, p o s s e t n e g a r e d i x i s s e: proinde quasi si quid a nobis dictum aut actum sit, id nisi litteris mandarimus, hominum memoria non comprehendatur.

LI. Ego vero in isto genere libentius cum multorum tum hominis eloquentissimi et sapientissimi, L. Crassi, auctoritatem sequor, qui cum Cn. Plancum defenderet, accusante M. Bruto, homine in dicendo vehementi et callido, cum Brutus duobus recitatoribus constitutis ex duabus eius orationibus capita alterna inter se contraria recitanda curasset, quod in dissuasione rogationis eius, quae contra coloniam Narbonensem ferebatur, quantum potest, de auctoritate senatus detrahit,

in suasione legis Serviliae summis ornat senatum laudibus, et multa in equites Romanos cum ex ea oratione asperius dicta recitasset, quo animi illorum iudicum in Crassum incenderentur, aliquantum esse commotus dicitur. **141.** Itaque in respondendo primum exposuit utriusque rationem temporis, ut oratio ex re et ex causa habita videretur, deinde ut intellegere posset Brutus, quem hominem et non solum qua eloquentia, verum etiam quo lepore et quibus facetiis praeditum lacessisset, tres ipse excitavit recitatores cum singulis libellis, quos M. Brutus, pater illius accusatoris, de iure civili reliquit. Eorum initia cum recitarentur, ea, quae vobis nota esse arbitror: 'Forte evenit, ut ruri in Privernati essemus ego et Brutus filius,' fundum Privernatem flagitabat: 'In Albano eramus ego et Brutus filius,' Albanum poscebat: 'In Tiburti forte quum adsedissemus ego et Brutus filius,' Tiburtem fundum requirebat: Brutum autem, hominem sapientem, quod filii nequitiam videret, quae praedia ei relinqueret, testificari voluisse dicebat: quod si potuisset honeste scribere se in balneis cum id aetatis filio fuisse, non praeterisset: eas tamen ab eo balneas non ex libris patris, sed ex tabulis et ex censu quaerere. Crassus tum ita Brutum ultus est, ut illum recitationis suae paeniteret. Moleste enim fortasse tulerat se in eis orationibus reprehensum, quas de re publica habuisset, in quibus forsitan magis requiratur constantia. **142.** Ego autem illa recitata esse non moleste fero. Neque enim ab illo tempore, quod tum erat, neque ab ea causa, quae tum agebatur, aliena fuerunt: neque mihi quicquam oneris suscepi, cum ista dixi, quo minus honeste hanc causam et libere possem defendere. Quod si velim confiteri me causam A. Cluenti nunc cognosse, antea fuisse in illa populari opinione, quis tandem id possit reprehendere? praesertim, iudices, cum a vobis quoque ipsis hoc impetrari sit aequissimum, quod ego et ab initio petivi et nunc

peto, ut, si quam huc graviorem de illo iudicio opinionem attulistis, hanc causa perspecta atque omni veritate cognita deponatis.

LII. **143**. Nunc, quoniam ad omnia, quae abs te dicta sunt, T. Acci, de Oppianici damnatione respondi, confiteare necesse est te opinionem multum fefellisse, quod existimaris me causam A. Cluenti non facto eius, sed lege defensurum. Nam hoc persaepe dixisti tibi sic renuntiari, me habere in animo causam hanc praesidio legis defendere. Itane est? ab amicis imprudentes videlicet prodimur, et est nescio quis de eis, quos amicos nobis arbitramur, qui nostra consilia ad adversarios deferat? Quisnam hoc tibi renuntiavit? quis tam improbus fuit? cui ego autem narravi? Nemo, ut opinor, in culpa est: et nimirum tibi istud lex ipsa renuntiavit. Sed num tibi ita defendisse videor, ut tota in causa mentionem ullam legis fecerim? num secus hanc causam defendisse, ac si lege Habitus teneretur? Certe, ut hominem confirmare oportet, nullus est locus a me purgandi istius invidiosi criminis praetermissus. **144**. Quid ergo est? Quaeret fortassis quispiam, displiceatne mihi legum praesidio capitis periculum propulsare? Mihi vero, iudices, non displicet, sed utor instituto meo. In hominis honesti prudentisque iudicio non solum meo consilio uti consuevi, sed multum etiam eius, quem defendo, et consilio et voluntati obtempero. Nam ut haec ad me causa delata est, qui leges eas, ad quas adhibemur et in quibus versamur, nosse deberem, dixi Habito statim eo capite, QUI COISSET QUO QUIS CONDEMNARETUR, illum esse liberum: teneri autem nostrum ordinem. Atque ille me orare atque obsecrare coepit, ne se lege defenderem. Cum ego quae mihi videbantur dicerem, traduxit me ad suam sententiam. Adfirmabat enim lacrimans non se cupidiorem esse civitatis retinendae quam existimationis. **145**. Morem homini gessi, et tamen idcirco feci—neque enim id semper facere debemus—

quod videbam per se ipsam causam sine lege copiosissime posse defendi. Videbam in hac defensione, qua iam sum usus, plus dignitatis, in illa, qua me hic uti noluit, minus laboris futurum. Quod si nihil aliud esset actum nisi ut hanc causam obtineremus, lege recitata perorassem.

LIII. Neque me illa oratio commovet, quod ait Accius indignum esse facinus, si senator iudicio quempiam circumvenerit, legibus eum teneri: si eques Romanus hoc idem fecerit, non teneri. **146.** Ut tibi concedam hoc indignum esse, quod cuius modi sit iam videro, tu mihi concedas necesse est multo esse indignius in ea civitate, quae legibus contineatur, discedi ab legibus. Hoc enim vinculum est huius dignitatis, qua fruimur in re publica, hoc fundamentum libertatis, hic fons aequitatis: mens et animus et consilium et sententia civitatis posita est in legibus. Ut corpora nostra sine mente, sic civitas sine lege suis partibus, ut nervis et sanguine et membris, uti non potest. Legum ministri magistratus, legum interpretes iudices, legum denique idcirco omnes servi sumus, ut liberi esse possimus. **147.** Quid est, Q. Naso, cur tu in isto loco sedeas? quae vis est qua abs te hi iudices tali dignitate praediti coerceantur? Vos autem, iudices, quam ob rem ex tanta multitudine civium tam pauci de hominum fortunis sententiam fertis? quo iure Accius quae voluit dixit? Cur mihi tam diu potestas dicendi datur? Quid sibi autem illi scribae, quid lictores, quid ceteri, quos apparere huic quaestioni video, volunt? Opinor haec omnia lege fieri totumque hoc iudicium, ut ante dixi, quasi mente quadam regi legis et administrari. Quid ergo? haec quaestio sola ita gubernatur? Quid M. Plaetori et C. Flamini inter sicarios? quid C. Orchivi peculatus? quid mea de pecuniis repetundis? quid C. Aquili, apud quem nunc ambitus causa dicitur? quid reliquae quaestiones? Circumspicite omnes rei publicae partes: omnia legum imperio et praescripto fieri videbitis.

148. Si quis apud me, T. Acci, te reum velit facere, clames te lege pecuniarum repetundarum non teneri. Neque haec tua recusatio confessio sit captae pecuniae, sed laboris et periculi non legitimi declinatio.

LIV. Nunc quid agatur et quid abs te iuris constituatur vide. Iubet lex ea, qua lege haec quaestio constituta est, iudicem quaestionis, hoc est, Q. Voconium, cum eis iudicibus, qui ei obvenerint—vos appellat, iudices—quaerere de veneno. In quem quaerere? infinitum est. QUICUMQUE FECERIT, VENDIDERIT, EMERIT, HABUERIT, DEDERIT. Quid eadem lex statim adiungit? Recita. DEQUE EIUS CAPITE QUAERITO. Cuius? qui coierit? convenerit? non ita est. Quid ergo est? dic. QUI TRIBUNUS MILITUM LEGIONIBUS QUATTUOR PRIMIS QUIVE QUAESTOR, TRIBUNUS PLEBIS. Deinceps omnes magistratus nominavit. QUIVE IN SENATU SENTENTIAM DIXIT, DIXERIT. Quid tum? QUI EORUM COIT, COIERIT, CONVENIT, CONVENERIT, QUO QUIS IUDICIO PUBLICO CONDEMNARETUR. 'Qui eorum.' Quorum? videlicet, qui supra scripti sunt. Quid intersit utro modo scriptum sit, etsi est apertum, ipsa tamen lex nos docet. Ubi enim omnes mortales adligat, ita loquitur: QUI VENENUM MALUM FECIT, FECERIT. Omnes viri, mulieres, liberi, servi in iudicium vocantur. Si idem de coitione voluisset, adiunxisset: QUIVE COIERIT. Nunc ita est: DEQUE EIUS CAPITE QUAERITO, QUI MAGISTRATUM HABUERIT INVE SENATU SENTENTIAM DIXERIT: QUI EORUM COIT, COIERIT. 149. Num is est Cluentius? Certe non est. Quis ergo est Cluentius? qui tamen defendi causam suam lege noluit. Itaque abicio legem: morem Cluentio gero: tibi tamen, Acci, pauca, quae ab huius causa seiuncta sunt, respondebo. Est enim quiddam in hac causa quod Cluentius ad se, est aliquid quod ego ad me putem pertinere. Hic sua putat interesse se re ipsa et gesto negotio, non lege defendi: ego autem mea existimo interesse me nulla in disputatione ab Accio videri

esse superatum. Non enim mihi haec causa sola dicenda est. Omnibus hic labor meus propositus est, quicumque hac facultate defensionis contenti esse possunt. Nolo quemquam eorum, qui adsunt, existimare me, quae de lege ab Accio dicta sunt, si reticuerim, comprobare. Quam ob rem, Cluenti, de te tibi obsequor, neque enim legem recito neque hoc loco pro te dico, sed ea, quae a me desiderari arbitror, non relinquam.

LV. **150**. Iniquum tibi videtur, Acci, esse non isdem legibus omnes teneri. Primum, ut id iniquissimum esse confitear, eius modi est, ut commutatis eis opus sit legibus, non ut his, quae sunt, non pareamus. Deinde quis umquam hoc senator recusavit, ne quo altiorem gradum dignitatis beneficio populi Romani esset consecutus, eo se putaret durioribus legum condicionibus uti oportere? Quam multa sunt commoda, quibus caremus, quam multa molesta et difficilia, quae subimus! atque haec omnia tantum honoris et amplitudinis commodo compensantur. Converte nunc ad equestrem ordinem atque in ceteros ordines easdem vitae condiciones: non perferent: putant enim minus multos sibi laqueos legum et condicionum ac iudiciorum propositos esse oportere, qui summum locum civitatis aut non potuerunt ascendere aut non petiverunt. **151**. Atque ut omittam leges alias omnes, quibus nos tenemur, ceteri autem sunt ordines liberati, hanc ipsam legem: NE QUIS IUDICIO CIRCUMVENIRETUR, C. Gracchus tulit: eam legem pro plebe, non in plebem tulit. Postea L. Sulla, homo a populi causa remotissimus, tamen, cum eius rei quaestionem hac ipsa lege constitueret, qua vos hoc tempore iudicatis, populum Romanum, quem ab hoc genere liberum acceperat, adligare novo quaestionis genere ausus non est. Quod si fieri posse existimasset, pro illo odio, quod habuit in equestrem ordinem, nihil fecisset libentius, quam omnem illam acerbitatem proscriptionis suae, qua est usus in veteres iudices,

in hanc unam quaestionem contulisset. **152**. Nec nunc quicquam agitur—mihi credite, iudices, et prospicite id, quod providendum est—nisi ut equester ordo in huiusce legis periculum concludatur. Neque hoc agitur ab omnibus, sed a paucis. Nam ei senatores, qui se facile tuentur integritate et innocentia, quales, ut vere dicam, vos estis, et ceteri, qui sine cupiditate vixerunt, equites ordini senatorio dignitate proximos, concordia coniunctissimos esse cupiunt: sed ei, qui sese volunt posse omnia neque praeterea quicquam esse aut in homine ullo aut in ordine, hoc uno metu se putant equites Romanos in potestatem suam redacturos, si constitutum sit, ut de eis, qui rem iudicarint, huiusce modi iudicia fieri possint. Vident enim auctoritatem huius ordinis confirmari: vident iudicia comprobari: hoc metu proposito evellere se aculeum severitatis vestrae posse confidunt. **153**. Quis enim de homine audeat paulo maioribus opibus praedito vere et fortiter iudicare, cum videat sibi de eo, quod coierit aut consenserit, causam esse dicendam?

LVI. O viros fortes, equites Romanos, qui homini clarissimo ac potentissimo, M. Druso, tribuno plebis restiterunt, cum ille nihil aliud ageret cum illa cuncta, quae tum erat, nobilitate, nisi ut ei qui rem iudicassent, huiusce modi quaestionibus in iudicium vocarentur. Tunc C. Flavius Pusio, Cn. Titinius, C. Maecenas, illa robora populi Romani ceterique eiusdem ordinis, non fecerunt idem, quod nunc Cluentius, ut aliquid culpae suscipere se putarent recusando, sed apertissime repugnarunt, cum haec recusarent et palam fortissime atque honestissime dicerent se potuisse iudicio populi Romani in amplissimum locum pervenire, si sua studia ad honores petendos conferre voluissent: sese vidisse, in ea vita qualis splendor inesset, quanta ornamenta, quae dignitas: quae se non contempsisse, sed ordine suo patrumque suorum contentos fuisse et vitam illam tranquillam et quietam, remotam a

procellis invidiarum et huiusce modi iudiciorum sequi maluisse: **154.** aut sibi ad honores petendos aetatem integram restitui oportere, aut, quoniam id non posset, eam condicionem vitae, quam secuti petitionem reliquissent, manere: iniquum esse eos, qui honorum ornamenta propter periculorum multitudinem praetermisissent, populi beneficiis esse privatos, iudiciorum novorum periculis non carere: senatorem hoc queri non posse, propterea quod ea condicione proposita petere coepisset, quodque permulta essent ornamenta, quibus eam mitigare molestiam posset, locus, auctoritas, domi splendor, apud exteras nationes nomen et gratia, toga praetexta, sella curulis, insignia, fasces, exercitus, imperia, provinciae: quibus in rebus cum summa recte factis maiores nostri praemia tum plura peccatis pericula proposita esse voluerunt. Illi non hoc recusabant, ne ea lege accusarentur, qua nunc Habitus accusatur, quae tunc erat Sempronia, nunc est Cornelia: intellegebant enim ea lege equestrem ordinem non teneri, sed ne nova lege adligarentur laborabant. **155.** Habitus ne hoc quidem umquam recusavit, quo minus vel ea lege rationem vitae suae redderet, qua non tenetur. Quae si vobis condicio placet, omnes id agamus, ut haec quam primum in omnes ordines quaestio perferatur.

LVII. Interea quidem, per deos immortales! quoniam omnia commoda nostra, iura, libertatem, salutem denique legibus obtinemus, a legibus non recedamus: simul et illud quam sit iniquum cogitemus, populum Romanum aliud nunc agere: vobis rem publicam et fortunas suas commisisse: sine cura esse: non metuere, ne lege ea, quam numquam ipse iusserit, et quaestione, qua se solutum liberumque esse arbitretur, per paucos iudices astringatur. **156.** Agit enim sic causam T. Accius, adulescens bonus et disertus, omnes cives legibus teneri omnibus: vos attenditis et auditis silentio, sicut facere debetis. A. Cluentius causam dicit eques Ro-

manus ea lege, qua lege senatores et ei, qui magistratum habuerunt, soli tenentur: mihi per eum recusare et in arce legis praesidia constituere defensionis meae non licet. Si obtinuerit causam Cluentius, sicuti vestra aequitate nixi confidimus, omnes existimabunt, id quod erit, obtinuisse propter innocentiam, quoniam ita defensus sit: in lege autem, quam attingere noluerit, praesidii nihil fuisse. **157**. Hic nunc est quiddam, quod ad me pertineat, de quo ante dixi, quod ego populo Romano praestare debeam, quoniam is vitae meae status est, ut omnis mihi cura et opera posita sit in hominum periculis defendendis. Video quanta et quam periculosa et quam infinita quaestio temptetur ab accusatoribus, cum eam legem, quae in nostrum ordinem scripta sit, in populum Romanum transferre conentur. Qua in lege est: QUI COIERIT, quod quam late pateat videtis: CONVENERIT, aeque incertum et infinitum est: CONSENSERIT, hoc vero cum infinitum tum obscurum et occultum: FALSUMVE TESTIMONIUM DIXERIT, quis de plebe Romana testimonium dixit umquam, cui non hoc periculum T. Accio auctore paratum esse videatis? Nam dicturum quidem certe, si hoc iudicium plebi Romanae propositum sit, neminem umquam esse confirmo. **158**. Sed hoc polliceor omnibus, si cui forte hac lege negotium facessetur, qui lege non teneatur, si is uti me defensore voluerit, me eius causam legis praesidio defensurum, et vel his iudicibus vel horum similibus facillime probaturum et omni me defensione usurum esse legis, qua nunc ut utar, ab eo, cuius voluntati mihi obtemperandum est, non conceditur.

LVIII. Non enim debeo dubitare, iudices, quin, si qua ad vos causa eius modi delata sit eius, qui lege non teneatur, etiam si is invidiosus aut multis offensus esse videatur, etiam si eum oderitis, etiam si inviti absoluturi sitis, tamen absolvatis et religioni potius vestrae quam odio pareatis. **159**. Est enim sapientis iudicis cogitare tantum sibi a populo Romano

is brought into trouble

esse permissum, quantum commissum sit et creditum, et non solum sibi potestatem datam, verum etiam fidem habitam esse meminisse: posse quem oderit absolvere, quem non oderit condemnare, et semper non quid ipse velit, sed quid lex et religio cogat cogitare: animadvertere qua lege reus citetur, de quo reo cognoscat, quae res in quaestione versetur. Cum haec sunt videnda, tum vero illud est hominis magni, iudices, atque sapientis, cum illam iudicandi causa tabellam sumpserit, non se reputare solum esse neque sibi quodcumque concupierit licere, sed habere in consilio legem, religionem, aequitatem, fidem: libidinem autem, odium, invidiam, metum cupiditatesque omnes amovere maximique aestimare conscientiam mentis suae, quam ab dis immortalibus accepimus, quae a nobis divelli non potest: quae si optimorum consiliorum atque factorum testis in omni vita nobis erit, sine ullo metu et summa cum honestate vivemus. **160.** Haec si T. Accius aut cognovisset aut cogitasset, profecto ne conatus quidem esset dicere, id quod multis verbis egit, iudicem, quod ei videatur, statuere et non devinctum legibus esse oportere. Quibus de rebus mihi pro Cluenti voluntate nimium, pro rei dignitate parum, pro vestra prudentia satis dixisse videor. Reliqua perpauca sunt, quae, quia vestrae quaestionis erant, idcirco illi statuerunt fingenda esse sibi et proferenda, ne omnium turpissimi reperirentur, si in iudicium nihil praeter invidiam attulissent.

LIX. Atque ut existimetis me necessario de his rebus, de quibus iam dixerim, pluribus egisse verbis, attendite reliqua: profecto intellegetis ea, quae paucis demonstrari potuerint, brevissime esse defensa.

161. Cn. Decidio Samniti, ei, qui proscriptus est, iniuriam in calamitate eius ab huius familia factam esse dixistis. Ab nullo ille liberalius quam a Cluentio tractatus est. Huius illum opes in rebus eius incommodissimis sublevarunt, atque

hoc cum ipse tum eius amici necessariique omnes cognorunt. Anchari et Paceni pastoribus huius vilicum vim et manus attulisse. Cum quaedam in callibus, ut solet, controversia pastorum esset orta, Habiti vilici rem domini et privatam possessionem defenderunt. Cum esset expostulatio facta, causa illis demonstrata, sine iudicio controversiaque discessum est. **162.** ℞ Aeli testamento propinquus exheredatus cum esset, heres hic alienior institutus est. P. Aelius Habiti merito fecit, neque hic in testamento faciendo interfuit, idque testamentum ab huius inimico Oppianico est obsignatum. Floro legatum ex testamento infitiatum esse. Non est ita. Sed cum HS $\overline{XXX}$ scripta essent pro HS $\overline{CCC}$, neque ei cautum satis videretur, voluit eum aliquid acceptum referre liberalitati suae. Primo debere negavit: post sine controversia solvit. Cei cuiusdam Samnitis uxorem post bellum ab hoc esse repetitam. Mulierem cum emisset a sectoribus, quo tempore eam primum liberam esse audivit, sine iudicio reddidit Ceio. **163.** Ennium esse quendam, cuius bona teneat Habitus. Est hic Ennius egens quidam calumniator, mercenarius Oppianici, qui permultos annos quievit: deinde aliquando cum servis Habiti furti egit: nuper ab ipso Habito petere coepit. Hic illo privato iudicio, mihi credite, vobis isdem fortasse patronis, calumniam non effugiet. Atque etiam, ut nobis renuntiatur, hominem multorum hospitum, Ambivium quendam, coponem de via Latina, subornatis, qui sibi a Cluentio servisque eius in taberna sua manus adlatas esse dicat. Quo de homine nihil etiam nunc dicere nobis est necesse. Si invitaverit, id quod solet, sic hominem accipiemus, ut moleste ferat se de via decessisse. **164.** Habetis, iudices, quae in totam vitam de moribus A. Cluenti, quem illi invidiosum esse reum volunt, annos octo meditati accusatores collegerunt. Quam levia genere ipso! quam falsa re! quam brevia responsu!

LX. Cognoscite nunc id, quod ad vestrum ius iurandum pertinet, quod vestri iudicii est, quod vobis oneris imposuit ea lex, qua coacti huc convenistis, de criminibus veneni: ut omnes intellegant quam paucis verbis haec causa perorari potuerit et quam multa a me dicta sint, quae ad huius voluntatem maxime, ad vestrum iudicium minime pertinerent.

165. Obiectum est Vibium Cappadocem ab hoc A. Cluentio veneno esse sublatum. Opportune adest homo summa fide et omni virtute praeditus, L. Plaetorius, senator, qui illius Vibi hospes fuit et familiaris. Apud hunc ille Romae habitavit, apud hunc aegrotavit, huius domi est mortuus. Intestatum dico esse mortuum possessionemque eius bonorum, ex edicto praetoris, huic, illius sororis filio, adulescenti pudentissimo et in primis honesto, equiti Romano datam, Numerio Cluentio, quem videtis.

166. Alterum veneficii crimen Oppianico huic adulescenti, cum eius in nuptiis more Larinatium multitudo hominum pranderet, venenum Habiti consilio paratum: id cum daretur in mulso, Balbutium quendam, eius familiarem, intercepisse, bibisse statimque esse mortuum. Hoc ego si sic agerem, tamquam mihi crimen esset diluendum, haec pluribus [verbis] dicerem, per quae nunc paucis percurrit oratio mea. **167.** Quid umquam Habitus in se admisit, ut hoc tantum ab eo facinus non abhorrere videatur? quid autem magno opere Oppianicum metuebat, cum ille verbum omnino in hac ipsa causa nullum facere potuerit, huic autem accusatores viva matre deesse non possint? id quod iam intellegetis. An ut de causa eius periculi nihil decederet, ad causam novum crimen accederet? Quod autem tempus veneni dandi illo die, illa frequentia? per quem porro datum? unde sumptum? quae deinde interceptio poculi? cur non de integro autem datum? Multa sunt, quae dici possunt: sed non committam ut videar non dicendo voluisse dicere: res enim se ipsa de-

fendit. **168.** Nego illum adulescentem, quem statim epoto poculo mortuum esse dixistis, omnino illo die esse mortuum. Magnum crimen et impudens mendacium. Perspicite cetera. Dico illum, cum ad illud prandium crudior venisset et, ut aetas illa fert, sibi tum non pepercisset, aliquot dies aegrotasse et ita esse mortuum. Quis huic rei testis est? Idem, qui sui luctus, pater: pater, inquam, illius adulescentis: quem propter animi dolorem pertenuis suspicio potuisset ex illo loco testem in A. Cluentium constituere, is hunc suo testimonio sublevat; quod recita. Tu autem, nisi molestum est, paulisper exsurge: perfer hunc dolorem commemorationis necessariae: in qua ego diutius non morabor, quoniam, quod fuit viri optimi, fecisti, ut ne cui innocenti maeror tuus calamitatem et falsum crimen adferret.

LXI. **169.** Unum etiam mihi reliquum eius modi crimen est, iudices, ex quo illud perspicere possitis, quod a me initio orationis meae dictum est: quicquid mali per hosce annos A. Cluentius viderit, quicquid hoc tempore habuerit sollicitudinis ac negotii, id omne a matre esse conflatum. Oppianicum veneno necatum esse, quod ei datum sit in pane per M. Asellium quendam, familiarem illius, idque Habiti consilio factum esse dicitis. In quo primum illud quaero, quae causa Habito fuerit, cur interficere Oppianicum vellet. Inimicitias enim fuisse confiteor, sed homines inimicos suos morte adfici volunt, aut quod eos metuunt aut quod oderunt. **170.** Quo tandem igitur Habitus metu adductus tantum in se facinus suscipere conatus est? quid erat quod iam Oppianicum poena adfectum pro maleficiis et eiectum e civitate quisquam timeret? quid metuebat? ne oppugnaretur a perdito, an ne accusaretur a damnato, an ne exsulis testimonio laederetur? Si autem quod oderat Habitus inimicum, idcirco illum vita frui noluit, adeone erat stultus, ut illam, quam tum ille vivebat, vitam esse arbitraretur, damnati, exsulis, deserti ab omnibus,

quem propter animi importunitatem nemo recipere tecto, nemo adire, nemo adloqui, nemo aspicere vellet? Huius igitur Habitus vitae invidebat? **171.** Hunc si acerbe et penitus oderat, non eum quam diutissime vivere velle debebat? huic mortem maturabat inimicus, quod illi unum in malis erat perfugium calamitatis? qui si quid animi et virtutis habuisset, ut multi saepe fortes viri in eius modi dolore, mortem sibi ipse conscisset: huic quam ob rem id vellet inimicus offerre, quod ipse sibi optare deberet? Nam nunc quidem quid tandem illi mali mors attulit? nisi forte ineptis fabulis ducimur, ut existimemus illum ad inferos impiorum supplicia perferre ac plures illic offendisse inimicos, quam hic reliquisse: a socrus, ab uxorum, a fratris, a liberum Poenis actum esse praecipitem in sceleratorum sedem ac regionem. Quae si falsa sunt, id quod omnes intellegunt, quid ei tandem eripuit mors praeter sensum doloris? **172.** Age vero, per quem venenum datum? Per M. Asellium.

LXII. Quid huic cum Habito? nihil: atque adeo, quod ille Oppianico familiarissime est usus, potius etiam simultas. Eine igitur, quem sibi offensiorem, Oppianico familiarissimum sciebat esse, potissimum et scelus suum et illius periculum committebat? Cur igitur tu, qui pietate ad accusandum excitatus es, hunc Asellium esse inultum tam diu sinis? cur non Habiti exemplo usus es, ut per illum, qui attulisset venenum, de hoc praeiudicaretur? **173.** Iam vero illud quam non probabile, quam inusitatum, iudices, quam novum, in pane datum venenum! Faciliusne potuit quam in poculo, latius potuit abditum aliqua in parte panis, quam si totum colliquefactum in potione esset, celerius potuit comestum quam epotum in venas atque in omnes partes corporis permanare? facilius fallere in pane, si esset animadversum, quam in poculo, cum ita confusum esset, ut secerni nullo modo posset? At repentina morte periit. **174.** Quod si esset ita factum, tamen ea res propter

multorum eius modi casum minime firmam veneni suspicionem haberet: quodsi esset suspiciosum, tamen potius ad alios quam ad Habitum pertineret. Verum in eo ipso homines impudentissime mentiuntur. Id ut intellegatis, et mortem eius et quem ad modum post mortem in Habitum sit crimen a matre quaesitum cognoscite.

175. Cum vagus et exsul erraret atque undique exclusus Oppianicus in Falernum se ad L. Quinctium contulisset, ibi primum in morbum incidit ac satis vehementer diuque aegrotavit. Cum esset una Sassia eaque Sex. Albio quodam colono, homine valenti, qui simul esse solebat, familiarius uteretur, quam vir dissolutissimus incolumi fortuna pati posset, et ius illud matrimonii castum atque legitimum damnatione viri sublatum arbitraretur, Nicostratus quidam, fidelis Oppianici servulus, percuriosus et minime mendax, multa dicitur domino renuntiare solitus esse. Interea Oppianicus cum iam convalesceret neque improbitatem coloni in Falerno diutius ferre posset et huc ad urbem profectus esset—solebat enim extra portam aliquid habere conducti—cecidisse de equo dicitur et homo infirma valetudine latus offendisse vehementer, et, postea quam ad urbem cum febri venerit, paucis diebus esse mortuus. Mortis ratio, iudices, eius modi est, ut aut nihil habeat suspicionis aut, si quid habet, id intra parietes in domestico scelere versetur.

LXIII. **176.** Post mortem eius [Sassia] moliri statim nefaria mulier coepit insidias filio: quaestionem habere de viri morte constituit. Emit de A. Rupilio, quo erat usus Oppianicus medico, Stratonem quendam, quasi ut idem faceret quod Habitus in emendo Diogene fecerat. De hoc Stratone et de Ascla quodam servo suo quaesituram esse dixit. Praeterea servum illum Nicostratum, quem nimium loquacem fuisse ac nimium domino fidelem arbitrabatur, ab hoc adulescente Oppianico in quaestionem postulavit. Hic cum esset illo

tempore puer et illa quaestio de patris sui morte constitui diceretur, etsi illum servum et sibi benevolum esse et patri fuisse arbitrabatur, nihil tamen est ausus recusare. Advocantur amici et hospites Oppianici et ipsius mulieris multi, homines honesti atque omnibus rebus ornati. Tormentis omnibus vehementissime quaeritur. Cum essent animi servorum et spe et metu temptati, ut aliquid in quaestione dicerent, tamen, ut arbitror, auctoritate advocatorum atque vi tormentorum adducti, in veritate manserunt neque se quicquam scire dixerunt. **177.** Quaestio illo die de amicorum sententia dimissa est. Satis longo intervallo post iterum advocantur. Habetur de integro quaestio: nulla vis tormentorum acerrimorum praetermittitur: adversari advocati et iam vix ferre posse, furere crudelis atque importuna mulier, sibi nequaquam, ut sperasset, ea, quae cogitasset, procedere. Cum iam tortor atque essent tormenta ipsa defessa neque tamen illa finem facere vellet, quidam ex advocatis, homo et honoribus populi ornatus et summa virtute praeditus, intellegere se dixit non id agi, ut verum inveniretur, sed ut aliquid falsi dicere cogerentur. Hoc postquam ceteri comprobarunt, ex omnium sententia constitutum est satis videri esse quaesitum. **178.** Redditur Oppianico Nicostratus, Larinum ipsa proficiscitur cum suis maerens, quod iam certe incolumem filium fore putabat, ad quem non modo verum crimen, sed ne ficta quidem suspicio perveniret et cui non modo aperta inimicorum oppugnatio, sed ne occultae quidem matris insidiae nocere potuissent. Larinum postquam venit, quae a Stratone illo venenum antea viro suo datum sibi persuasum esse simulasset, instructam ei continuo et ornatam Larini medicinae exercendae causa tabernam dedit.

LXIV. Unum, alterum, tertium annum Sassia quiescebat, ut velle atque optare aliquid calamitatis filio potius quam id struere et moliri videretur. **179.** Tum interim *Q.* Hortensio

Q. Metello consulibus, ut hunc Oppianicum aliud agentem ac nihil eius modi cogitantem ad hanc accusationem detraheret, invito despondit ei filiam suam, illam, quam ex genero susceperat, ut eum nuptiis adligatum simul et testamenti spe devinctum possit habere in potestate. Hoc ipso fere tempore Strato ille medicus domi furtum fecit et caedem eius modi. Cum esset in aedibus armarium, in quo sciret esse nummorum aliquantum et auri, noctu duos conservos dormientes occidit in piscinamque deiecit: ipse armarii fundum exsecuit, et HS . . . . . et auri quinque pondo abstulit, uno ex servis puero non grandi conscio. **180**. Furto postridie cognito omnis suspicio in eos servos, qui non comparebant, commovebatur. Cum exsectio illa fundi in armario animadverteretur, quaerebant homines quonam modo fieri potuisset. Quidam ex amicis Sassiae recordatus est se nuper in auctione quadam vidisse in rebus minutis aduncam ex omni parte dentatam et tortuosam venire serrulam, qua illud potuisse ita circumsecari videretur. Ne multa: perquiritur a coactoribus: invenitur ea serrula ad Stratonem pervenisse. Hoc initio suspicionis orto et aperte insimulato Stratone puer ille conscius pertimuit: rem omnem dominae indicavit, homines in piscina inventi sunt, Strato in vincula coniectus est atque etiam in taberna eius nummi, nequaquam omnes, reperiuntur. **181**. Constituitur quaestio de furto. Nam quid quisquam suspicari aliud potest? An hoc dicitis? armario expilato, pecunia ablata, non omni reciperata, occisis hominibus, institutam esse quaestionem de morte Oppianici? cui probatis? quid est quod minus veri simile proferre possitis? Deinde, ut omittam cetera, triennio post mortem Oppianici de eius morte quaerebatur? Atque etiam incensa odio pristino Nicostratum eundem illum tum sine causa in quaestionem postulavit. Oppianicus primo recusavit. Postea, cum illa abducturam se filiam, mutaturam esse testamentum minaretur, mulieri crudelissimae servum

Quinque pondo

fidelissimum non in quaestionem tulit, sed plane ad supplicium dedidit.

LXV. **182**. Post triennium igitur agitata denuo quaestio de viri morte habebatur, et de quibus servis habebatur? Nova, credo, res obiecta, novi quidam homines in suspicionem vocati sunt? De Stratone et de Nicostrato. Quid? Romae quaesitum de istis hominibus non erat? Itane tandem? mulier iam non morbo, sed scelere furiosa, cum quaestionem habuisses Romae, cum de T. Anni, L. Rutili, P. Saturi, ceterorum honestissimorum virorum sententia constitutum esset satis quaesitum videri, eadem de re triennio post, isdem de hominibus, nullo adhibito non dicam viro, ne colonum forte adfuisse dicatis, sed bono viro, in filii caput quaestionem habere conata es? **183**. An hoc dicitis—mihi enim venit in mentem quid dici possit, tametsi ab hoc non esse hoc dictum mementote—cum haberetur de furto quaestio, Stratonem aliquid de veneno esse confessum? Hoc uno modo, iudices, saepe multorum improbitate depressa veritas emergit et innocentiae defensio interclusa respirat, quod aut ei, qui ad fraudem callidi sunt, non tantum audent, quantum excogitant, aut ei, quorum eminet audacia atque proiecta est, a consiliis malitiae deseruntur. Quod si aut confidens astutia aut callida esset audacia, vix ullo eis obsisti modo posset. Utrum furtum factum non est? At nihil clarius Larini. An ad Stratonem suspicio non pertinuit? At is et ex serrula insimulatus et a puero conscio est indicatus. An id actum non est in quaerendo? Quae fuit igitur alia causa quaerendi? an, id quod vobis dicendum est et quod tum Sassia dictitavit, cum de furto quaereretur, tum Stratonem isdem in tormentis dixisse de veneno? **184**. En hoc illud est, quod ante dixi: mulier abundat audacia, consilio et ratione deficitur. Nam tabellae quaestionis plures proferuntur, quae recitatae vobisque editae sunt, illae ipsae, quas tum obsignatas esse dixit: in quibus

tabellis de furto nulla littera invenitur. Non venit in mentem, primum orationem Stratonis conscribere de furto, post aliquod dictum adiungere de veneno, quod non percontatione quaesitum, sed per dolorem expressum videretur. Quaestio de furto est, veneni iam suspicio superiore quaestione sublata: quod ipsum haec eadem mulier iudicarat, quae ut Romae de amicorum sententia statuerat satis esse quaesitum, postea per triennium maxime ex omnibus servis Stratonem illum dilexerat, in honore habuerat, commodis omnibus adfecerat. **185.** Cum igitur de furto quaereretur et eo furto, quod ille sine controversia fecerat, tum ille de eo, quod quaerebatur, verbum nullum fecit? De veneno statim dixit? de furto si non eo loco, quo debuit, ne in extrema quidem aut media aut aliqua denique parte quaestionis verbum fecit ullum?

LXVI. Iam videtis illam nefariam mulierem, iudices, eadem manu, qua, si detur potestas, interficere filium cupiat, hanc fictam quaestionem conscripsisse. Atque istam ipsam quaestionem dicite qui obsignarit unum aliquem nominatim: neminem reperietis, nisi forte eius modi hominem, quem ego proferri malim quam neminem nominari. **186.** Quid ais, T. Acci? tu periculum capitis, tu indicium sceleris, tu fortunas alterius litteris conscriptas in iudicium adferas: neque earum auctorem litterarum neque obsignatorem neque testem ullum nominabis? et quam tu pestem innocentissimo filio de matris sinu deprompseris, hanc hi tales viri comprobabunt? Esto: in tabellis nihil est auctoritatis: quid, ipsa quaestio iudicibus, quid, amicis hospitibusque Oppianici, quos adhibuerat antea, quid, huic tandem ipsi tempori cur non servata est? Quid istis hominibus factum est, Stratone et Nicostrato? **187.** Quaero abs te, Oppianice, servo tuo Nicostrato quid factum esse dicas: quem tu, cum hunc brevi tempore accusaturus esses, Romam deducere, dare potestatem indicandi, incolumem denique servare quaestioni, servare his iudicibus, servare huic

tempori debuisti. Nam Stratonem quidem, iudices, in crucem esse actum exsecta scitote lingua: quod nemo Larinatium est qui nesciat. Timuit mulier amens non suam conscientiam, non odium municipum, non famam omnium, sed quasi non omnes eius sceleris testes essent futuri, sic metuit, ne condemnaretur extrema servuli voce morientis.

188. Quod hoc portentum, di immortales! quod tantum monstrum in ullis locis, quod tam infestum scelus et immane aut unde natum esse dicamus? Iam enim videtis profecto, iudices, non sine necessariis me ac maximis causis principio orationis meae de matre dixisse. Nihil est enim mali, nihil sceleris, quod illa non ab initio filio voluerit, optaverit, cogitaverit, effecerit. Mitto illam primam libidinis iniuriam, mitto nefarias generi nuptias, mitto cupiditate matris expulsam ex matrimonio filiam: quae nondum ad huiusce vitae periculum, sed ad commune familiae dedecus pertinebant. Nihil de alteris Oppianici nuptiis queror: quarum illa cum obsides filios ab eo mortuos accepisset, tum denique in familiae luctum atque in privignorum funus nupsit. Praetereo, quod A. Aurium, cuius illa quondam socrus, paulo ante uxor fuisset, cum Oppianici esse opera proscriptum occisumque cognosset, eam sibi domum sedemque delegit, in qua cotidie superioris viri mortis indicia et spolia fortunarum viderit. **189**. Illud primum queror de illo scelere, quod nunc denique patefactum est, Fabriciani veneni—quod iam tum recens suspiciosum ceteris, huic incredibile, nunc vero apertum iam omnibus ac manifestum videtur—non est profecto de illo veneno celata mater: nihil est ab Oppianico sine consilio mulieris cogitatum: quod si esset, certe postea, deprehensa re, non illa ut a viro improbo discessisset, sed ut a crudelissimo hoste fugisset domumque illam in perpetuum scelerum omnium adfluentem reliquisset. **190**. Non modo id non fecit, sed ab illo tempore nullum locum praetermisit, in quo

non strueret insidias aliquas ac dies omnes atque noctes tota mente mater de pernicie filii cogitaret. Quae primum ut illum confirmaret Oppianicum accusatorem filio suo, donis muneribus, collocatione filiae, spe hereditatis obstrinxit.

LXVII. Ita quod apud ceteros novis inter propinquos susceptis inimicitiis saepe fieri divortia atque adfinitatum discidia vidimus, haec mulier satis firmum accusatorem filio suo fore neminem putavit, nisi qui in matrimonium sororem eius antea duxisset. Ceteri novis adfinitatibus adducti veteres inimicitias saepe deponunt: illa sibi ad confirmandas inimicitias adfinitatis coniunctionem pignori fore putavit. **191.** Neque in eo solum diligens fuit, ut accusatorem filio suo compararet, sed etiam cogitavit, quibus eum rebus armaret. Hinc enim illae sollicitationes servorum et minis et promissis, hinc illae infinitae crudelissimaeque de morte Oppianici quaestiones: quibus finem aliquando non mulieris modus, sed amicorum auctoritas fecit. Ab eodem scelere illae triennio post habitae Larini quaestiones: eiusdem amentiae falsae conscriptiones quaestionum: ex eodem furore etiam illa conscelerata exsectio linguae: totius denique huius ab illa est et inventa et adornata comparatio criminis. **192.** Atque his rebus cum instructum accusatorem filio suo Romam misisset, ipsa paulisper conquirendorum et conducendorum testium causa Larini est commorata: postea autem, quam appropinquare huius iudicium ei nuntiatum est, confestim huc advolavit, ne aut accusatoribus diligentia aut pecunia testibus deesset aut ne forte mater hoc sibi optatissimum spectaculum huius sordium atque luctus et tanti squaloris amitteret.

LXVIII. Iam vero quod iter Romam eius mulieris fuisse existimatis? quod ego propter vicinitatem Aquinatium et Fabraternorum ex multis audivi et comperi: quos concursus in his oppidis? quantos et virorum et mulierum gemitus esse

factos? mulierem quandam Larinatem illim usque a mari supero Romam proficisci cum magno comitatu et pecunia, quo facilius circumvenire iudicio capitis atque opprimere filium posset. **193.** Nemo erat illorum, paene dicam, quin expiandum illum locum esse arbitraretur, quacumque illa iter fecisset: nemo quin terram ipsam violari, quae mater est omnium, vestigiis consceleratae matris putaret. Itaque nullo in oppido consistendi potestas ei fuit: nemo ex tot hospitibus inventus est qui non contagionem aspectus fugeret. Nocti se potius ac solitudini quam ulli aut urbi aut hospiti committebat. **194.** Nunc vero quid agat, quid moliatur, quid denique cotidie cogitet quem ignorare nostrorum putat? Quos appellarit, quibus pecuniam promiserit, quorum fidem pretio labefactare conata sit tenemus. Quin etiam nocturna sacrificia, quae putat occultiora esse, sceleratasque eius preces et nefaria vota cognovimus: quibus illa etiam deos immortales de suo scelere testatur neque intellegit pietate et religione et iustis precibus deorum mentes, non contaminata superstitione neque ad scelus perficiendum caesis hostiis posse placari. Cuius ego furorem atque crudelitatem deos immortales a suis aris atque templis aspernatos esse confido.

LXIX. **195.** Vos iudices, quos huic A. Cluentio quasi aliquos deos ad omne vitae tempus fortuna esse voluit, huius importunitatem matris a filii capite depellite. Multi saepe in iudicando peccata liberum parentum misericordiae concesserunt: vos ne huius honestissime actam vitam matris crudelitati condonetis rogamus, praesertim cum ex altera parte totum municipium videre possitis. Omnes scitote, iudices—incredibile dictu est, sed a me verissime dicetur—omnes Larinates, qui valuerunt, venisse Romam, ut hunc studio frequentiaque sua quantum possent in tanto eius periculo sublevarent. Pueris illud hoc tempore et mulieribus oppidum scitote esse traditum, idque in praesentia communi Italiae

pace, non domesticis copiis esse tutum. Quos tamen ipsos aeque et eos, quos praesentes videtis, huius exspectatio iudicii dies noctesque sollicitat. **196.** Non illi vos de unius municipis fortunis arbitrantur, sed de totius municipii statu, dignitate commodisque omnibus sententias esse laturos. Summa est enim, iudices, hominis in communem municipii rem diligentia, in singulos municipes benignitas, in omnes homines iustitia et fides. Praeterea nobilitatem illam inter suos locumque a maioribus traditum sic tuetur, ut maiorum gravitatem, constantiam, gratiam, liberalitatem adsequatur. Itaque eis eum verbis publice laudant, ut non solum testimonium suum iudiciumque significent, verum etiam curam animi ac dolorem. Quae dum laudatio recitatur, vos quaeso, qui eam detulistis, adsurgite. **197.** Ex lacrimis horum, iudices, existimare potestis, omnes haec decuriones decrevisse lacrimantes. Age vero, vicinorum quantum studium, quam incredibilis benevolentia, quanta cura est! Non illi in libellis laudationem decretam miserunt, sed homines honestissimos, quos nossemus omnes, huc frequentes adesse et hunc praesentes laudare voluerunt. Adsunt Ferentani, homines nobilissimi, Marrucini item pari dignitate: Teano Apulo atque Luceria equites Romanos, homines honestissimos, laudatores videtis: Boviano totoque ex Samnio cum laudationes honestissimae missae sunt tum homines amplissimi nobilissimique venerunt. **198.** Iam qui in agro Larinati praedia, qui negotia, qui res pecuarias habent, honesti homines et summo splendore praediti, difficile dictu est quam sint solliciti, quam laborent. Non multi mihi ab uno sic diligi videntur, ut hic ab his universis.

LXX. Quam doleo abesse ab huius iudicio L. Volusienum, summo splendore hominem ac virtute praeditum. Vellem praesentem possem P. Helvidium Rufum, equitem Romanum omnium ornatissimum, nominare! qui cum huius causa dies

noctesque vigilaret et cum me hanc causam doceret, in morbum gravem periculosumque incidit: in quo tamen non minus de capite huius quam de sua vita laborat. Cn. Tudici senatoris, viri optimi et honestissimi, par studium ex testimonio et laudatione cognoscetis. Eadem spe, sed maiore verecundia de te, P. Volumni, quoniam iudex es in A. Cluentium, dicimus. Et, ne longum sit, omnium vicinorum summam esse in hunc benevolentiam confirmamus. **199**. Horum omnium studium, curam, diligentiam meumque una laborem, qui totam hanc causam vetere instituto solus peroravi, vestramque simul, iudices, aequitatem et mansuetudinem una mater oppugnat. At quae mater? Quam caecam crudelitate et scelere ferri videtis, cuius cupiditatem nulla umquam turpitudo retardavit, quae vitiis animi in deterrimas partes iura hominum convertit omnia, cuius ea stultitia est, ut eam nemo hominem, ea vis, ut nemo feminam, ea crudelitas, ut nemo matrem appellare possit. Atque etiam nomina necessitudinum, non solum naturae nomen et iura mutavit: uxor generi, noverca filii, filiae pelex: eo iam denique adducta est, uti sibi praeter formam nihil ad similitudinem hominis reservarit. **200**. Quare, iudices, si scelus odistis, prohibete aditum matris a filii sanguine, date parenti hunc incredibilem dolorem ex salute, ex victoria liberum: patimini matrem, ne orbata filio laetetur, victam potius vestra aequitate discedere. Sin autem, id quod vestra natura postulat, pudorem, veritatem virtutemque diligitis, levate hunc aliquando supplicem vestrum, iudices, tot annos in falsa invidia periculisque versatum, qui nunc primum post illam flammam aliorum facto et cupiditate excitatam spe vestrae aequitatis erigere animum et paulum respirare a metu coepit, cui posita sunt in vobis omnia, quem servatum esse plurimi cupiunt, servare soli vos potestis. **201**. Orat vos Habitus, iudices, et flens obsecrat, ne se invidiae, quae in iudiciis valere non debet, ne matri, cuius vota et preces a ves-

tris mentibus repudiare debetis, ne Oppianico, homini nefario, condemnato iam et mortuo, condonetis.

LXXI. Quod si qua calamitas hunc in hoc iudicio adflixerit innocentem, ne iste miser, si, id quod difficile factu est, in vita remanebit, saepe et multum queretur deprehensum esse illud quondam Fabricianum venenum. Quod si tum indicatum non esset, non huic aerumnosissimo venenum illud fuisset, sed multorum medicamentum maerorum: postremo etiam fortassis mater exsequias illius funeris prosecuta mortem [se] filii lugere simulasset. Nunc vero quid erit profectum, nisi ut huius ex mediis mortis insidiis vita ad luctum conservata, mors sepulcro patris privata esse videatur? **202.** Satis diu fuit in miseriis, iudices: satis multos annos ex invidia laboravit. Nemo huic tam iniquus praeter parentem fuit, cuius non animum iam expletum esse putemus. Vos, qui aequi estis omnibus, qui, ut quisque crudelissime oppugnatur, eum lenissime sublevatis, conservate A. Cluentium: restituite incolumem municipio: amicis, vicinis, hospitibus, quorum studia videtis, reddite: vobis in perpetuum liberisque vestris obstringite. Vestrum est hoc, iudices, vestrae dignitatis, vestrae clementiae: recte hoc repetitur a vobis, ut virum optimum atque innocentissimum plurimisque mortalibus carissimum atque iucundissimum his aliquando calamitatibus liberetis, ut omnes intellegant in contionibus esse invidiae locum, in iudiciis veritati.



EXPLANATORY NOTES.

ABBREVIATIONS USED.

Ry. = Ramsay, *pro Cluent.*
Ry. *Rom. Ant.* = Ramsay's *Manual of Roman Antiquities.*
R. = Roby, *Latin Grammar.*
r. = Roby, *School Latin Grammar.*
L. and Sh. = Lewis and Short, *Latin Dictionary.*
H. N. = suggestions by Prof. Nettleship.
H. J. R. = suggestions by Mr. Roby.
P. = Peterson's Speech of Cic. *pro Cluent.* translated.
H. N. in P. = H. Nettleship's notes quoted in P.
Dr., Dräg. = Draeger's *Historische Syntax.*
MAN. = P. Manutius.

EXORDIUM, §§ 1—8.

I. 1.—**Page 1**, l. 1. **omnem,** *i.q.* totam. Cp. *Sest.* § 53, illud quod mihi in hac omni est oratione propositum; Caes., Gallia est omnis divisa in partes tres, with *Verr.* II. i. § 34, haec eadem erit quadripartita distributio *totius* accusationis meae. It may be omitted in translating. The Exordium (§§ 1-8) opens with the 'Partitio' of the subject into 'invidia' or prejudice, and 'crimina' or substantive charges. This contrast runs through the first three sections, being no less than six times renewed, but so skilfully varied as to secure the maximum of repetition with the minimum of tediousness. In § 1 the order is invidia)(crimina: in §§ 2, 3, crimina)(invidia: then declining on to **invidia**, Cicero gives the keynote of the first and main part of his argument (§§ 9-142) at the end of the section. 2. **altera** is in both places abl. case, the subject to *videbatur* being *accusator.* When there is a choice, Latin generally prefers a personal to an impersonal subject for a verb of action. 3. **iam**: after the lapse of eight years; v. Introd. **invidia iud. Iun.**: the Latin genitive is used with much pregnancy of meaning, especially by Cicero, being applied to every kind of *relation;* in this passage, to that of *cause and effect.* This use connects alike with the possessive and the objective uses. It may be classed as a genitive of the *remoter object*, answering to a prepositional phrase such as *ob iudicium.* Cp. *Mur.* § 56, odio inimicitiarum; *Scaur.* § 11, discessus solitudo; Verg. *A.* ii. 413, ereptae virginis ira, 'originating in,' 'entailed by'; § 171, perfugium calamitatis, 'refuge from misfortune.' R. 1318,

r. 525b.[1] 'Prejudice which the trial before Junius has left.' In § 128, flagitium rei militaris = flagitium *in* re m. admissum: another variety of this genitive. **Invidia** (originally the 'fascination' of the evil eye) is used in a passive sense, 'unpopularity,' as well as in an active sense, 'ill-will,' 'prejudice,' *aegritudo suscepta propter alterius res secundas quae nihil nocent invidenti* (Cic. *Tusc.* iv. § 17). The idea of *unfairness* persists in the word: it is never a mere synonym of Lat. *odium*. 4. **consuetudinis causa**, 'for mere form's sake.' 5. **rationem**, the 'consideration,' or 'question': v. Glossary. 6. **quaestio**, 'court of inquiry': one of the quaestiones perpetuae, or 'standing jury-courts': in this case, the *q. inter Sicarios*, which administered the lex Cornelia de Sicariis et Veneficis; v. Gloss. 7. **distributionem invidiae et criminum**: objective gen. R. 1312a, r. 525a. 'Accordingly I am resolved to follow his example in my defence, and to treat of this prejudice and these charges separately, trusting thus to make it apparent to every one that it has been my desire throughout neither to shirk the truth by suppression, nor to darken it with a cloud of words.' Contrast the orator's boast when the trial was over: Se tenebras offudisse iudicibus in causa Cluenti gloriatus est.—Quint. ii. 17. 21. **et** sometimes connects the members of a divided whole. *Invidia*, *crimina*, are the proposed *divisions* of the speech. In such a context *et* takes a quasi-disjunctive force, and in some constructions must be translated accordingly: *e.g.* Tac. *Ann.* ii. 66, ius et iniuriam discreturos, 'distinguish right *from* wrong.' Hence its use in comparisons, as in § 195, quos tamen ipsos aeque, *et* eos quos praesentes videtis . . . sollicitat, 'as : *Caec.* § 20, non alia causa est aequitatis in uno servo *et* in pluribus, 'than.' 8. **subterfugere** refers to **invidia**: **obscurare** to **crimina**.—MAN.

2.—10. **et** appends an explanation, as often in Verg., *e.g. A.* viii. 177:

toro et villosi pelle leonis.

Ea merely anticipates **quae**, and must not be understood to emphasise the definition, as though the sentence ran, 'altera pars, et ea propria . . .,' or 'et ea quidem propria . . .' 11. **iudicii**, 'court.' For the different meanings v. Glossary. 12. **per mihi brevis**, tmesis; R. 986, r. 945. 14. **contionibus s. c.**: alluding to the agitation by the tribune, L. Quinctius; v. Introd. p. xxv, *et seq.*, and §§ 77, 93. 15. **in agendo** belongs equally to *quantum difficultatis* and *q. laboris*, being placed between them by the grammatical figure called *coniunctio*: cp. pp. 1, l. 8: 3, ll. 12, 13, 15, 26: 4, ll. 25, 26, et saep. Cp. n. on *adiunctio*, § 15.

3.—17. For the argument of the following passage, v. crit. n. It must be observed that the regimen of *quod* extends to *de invidia . . . debetis* (l. 22), which indeed contains the main thought, to which the former thought (*de criminibus . . . consuestis*, l. 18) might be subordinated. 'That whereas in dealing with direct charges it is your habit . . ., in dealing with prejudice your duty is . . .' The clauses would be

[1] V. also Dr. [2] i. § 203.

balanced in Greek by *μέν* . . *δέ* . . . There is no antithesis ('on the one hand . . . on the other hand . . .') between the clauses *ut quaeratis*, *ut non existimetis cet.*; the latter is simply a re-statement of the former. To say that the *whole* task of refutation is left to the advocate [**omnem**, cp. n. § 1, l. 1] is to say in other words that the defendant is to be credited with innocence to the exact amount to which the defence shall entitle him, and to neither more nor less [*non plus* . . *quam quantum cet.*].—So a colon is wanted at *potuerit* instead of the full stop which appears in most edd. 18. **oratore** here has its archaic sense, 'spokesman,' *i.e.* 'advocate,' *patronus*: being a verbal subst. from *oro*, which meant 'to speak for another' or '*plead*.' *Orare* antiquos dixisse pro *agere* testimonio sunt *oratores*, Fest. p. 198, Müll.; cp. also Donatus on Ter. *Hec.*, orator est is cui causa defendenda mandatur: v. L. and Sh. sub voc. *orator*, *oro*. 21. **inter vos**, v. crit. n. 23. **agitur**, cp. § 77, agi fortunas omnium dicebat; *Sest.* § 103, populus libertatem agi putabat suam: 'is concerned.' **Page 2,** l. 4. 'In the one part of the case we must enlist your vigilance in our cause: in the other we must throw ourselves upon your chivalrous feeling.' **Diligentia** and **fides** are often associated, as in § 118. Here *diligentia* is 'careful attention,' 'scrutiny of the charges made'; *fides*, the sense of honour which prompts a man to *protect* one who is placed at an unfair disadvantage by prejudice. Cp. *Sex. Rosc.* § 27, eius virtute, fide, diligentia factum est ut hic potius vivus in reos quam occisus in proscriptos referretur, of Caecilia, who had harboured Roscius from his enemies. For **fides** in the *concrete* sense of a *warrant* of protection, we may compare the phrase *fides publica*, a 'passport.' 5. **sine vestro ac sine talium virorum subsidio**: the statement might be purely general—'no one could combat prejudice without your aid or the aid of jurors like you.' But in many passages in Cicero *tales viri* or *hi tales viri* denotes the jury sitting for the time being (*Quinct.* §§ 53, 81; *Sex. Rosc.* § 54; *Divin. in Caec.* § 51; *Verr.* ii. 1. 10; cp. *de Orat.* ii. § 364, *de domo*, § 3); and the presumption from usage is strong in favour of another rendering, 'without your aid, that is, without the aid of this honourable court.' § 95, 'sine vestra sapientia ac sine iudiciorum remediis' is very similar. *Ac* appends a nearer definition of *vestro*: cp. its use in Livy's 'viri ac Romani' (vii. 13. 9; xxii. 14. 11). The repetition of the preposition need not be a difficulty—cp. § 4, in aliqua perniciosissima flamma *atque in* communi incendio; § 17, in communibus hominum sensibus *atque in* ipsa natura. V. crit. n. here and on § 141.

4.—6. **quo me vertam nescio.** The passage is quoted by Quintilian and Romanus Aquila as an example of the rhetorical figure called *διαπόρησις* (*dubitatio*), an assumed hesitation. Cornificius says (iv. 29. 40), 'dubitatio est, quom quaerere videtur orator, utrum de duobus potius aut quid de pluribus potissimum dicat.' 8. **esse . . . agitatam**: Cic. constantly places the auxiliary before its participle at an interval of more than one word. Cp. § 1, l. 6. There is no contrast here of present

time to past (*fuisse*, l. 7). Cp. *de Orat.* i. 31, populi motus, iudicum religiones, senatus gravitatem unius oratione converti (H.N. in P.). 9. **commem. in sen.** : for the facts v. § 136. 10. **tantam,** 'so strong.' Some of the simpler adjectives of *size* (*magnus multus summus tantus*) take from their context a meaning which in English requires more precise expression. Cp. *Sest.* § 62, 'ob eam causam, quae *quanta* fuerit iam mihi dicere non est necesse,' that is, *quam iusta*; § 9, *maioribus* criminibus 'more heinous'; § 43, *tantae* voluntati 'so earnest'; § 168, *magnum* crimen et impudens mendacium 'a serious charge'; Verg. *A.* iii. 372, *multo* suspensum numine: which is like the πολλὴ Κύπρις of Eur. *Hippol.* 1 and 443.—'That were beyond my power: yours, gentlemen, is the strong support which my innocent client needs against this disastrous defamation, which is like the outbreak of some fire fraught with destruction to all alike.' 12. **hac calamitosa fama**, cp. explan. n. on § 88, l. 19. 14. **flamma**, cp. *Sest.* § 73, 'vim fuisse illam, flammam quassatae rei publicae,' of the attack of Clodius on Cicero, 'a sudden conflagration.' **atque in** : v. § 3, 5 n. 13. **communi,** so § 3, *causa communis*, § 8, *communibus invidiae periculis.* Not quite 'of the community at large,' (as Ry.): rather 'in which we are all concerned.' [*Communis* generally means, in such passages of Cic., *common to the speaker and those whom he is addressing.*—H. N.] Cp. *Verr.* ii. 1. 39, debent . . . quid ipsis in tali re metuendum sit, cogitare. Commune est hoc malum, communis metus, commune periculum. So Horace opposes *communis* to *privatus*: privatus illis census erat brevis: commune magnum, *C.* ii. 15. 13.

II. 5.—14. **aliis in locis**; 'contiones seditiose concitatae, hominum imperitorum coetus' (Cl.). 20. **illa definitio** cet. 'That characteristic of fair trials . . . that though there be no prejudice, guilt is punished, and if there be no guilt, prejudice is put aside.'—H. J. R. **ut** is explanatory. For **ut ne**, cp. n. on § 16.

6.—25. **ne quid . . . adferatis** : cp. § 8, sic ut me audiatis, quasi hoc tempore haec causa primum dicatur. 26, 27. **nisi . . . ac si . . .** Here *ac si=ac si potius*; cp. the somewhat similar use of *-que* in line 31. 30. The principal verb (**ne repugnetis**) is limited by two conditions, the one a prior and wider condition (**si . . . comprehendistis**), the other later and narrower (**si . . . extorquebit**): which, in rendering into English, must be co-ordinated—'if . . . and if . . .' Cp. § 158 : § 140 (a similar repetition of *cum*) : *de Fin.* ii. § 112, si Xerxes, cum . . . maria ambulavisset, terram navigasset, si . . . causam quis ex eo quaereret tantarum copiarum tantique belli, mel se auferre ex Hymetto voluisse diceret, certe sine causa videretur talia conatus. Plaut. *Poen.* 1044, si ita est, tesseram | conferre si uis hospitalem, eccam adtuli. Demosth. *Philipp.* i. § 1, *εἰ μὲν περὶ καινοῦ τινὸς πράγματος προυτίθετο λέγειν, . . . εἰ μὲν ἤρεσκέ τί μοι τῶν ὑπὸ τούτων ῥηθέντων, ἡσυχίαν ἂν ἦγον.* This must not be confounded with *anaphora* (rhetorical repetition) to which the third and the fourth *si* in the sentence are due. 29. **con-**

vellet . . . labefactabit . . . extorquebit . . . '*Convellere* is to pluck away by a straight pull; *labefactare*, to shake an object backwards and forwards, and so loosen its hold of anything to which it may be attached; *extorquere* is to wrench out by a twist. Thus if we wished to pull a stake from the ground, we should first attempt 'convellere'; if this failed we should proceed 'labefactare'; and finally, if still unsuccessful, 'extorquere.' The same processes would be applied if we wished to deprive a person by violence of anything which he was grasping firmly (**comprehendebat**). In the next clause **remittatis** means 'let go your hold' (Ramsay). The separate force of the words is well given: but there is no climax in the verbs, *convello* being fully as forcible a term as *extorqueo*: and Professor Nettleship notes that *convello* and *labefacto* are nearly synonymous in Rab. Perd. § 3, cum cuncta auxilia reipublicae labefactari convellique videat. 30. **ne repugnetis**: dependent on *postulo* (l. 24), *primum . . . deinde . . . tum* . . . giving the three parts of his demand. We need not, with Kühner, consider this an instance of a Pres. Subj. 2d Person, expressing a *prohibition to a definite person or persons*. This is a common construction in the Comic Poets, occurs once in Hor. (*Serm.* ii. 3. 88, ne sis patruus mihi), and once only (in a more than doubtful case—cp. *Cluent.* § 30, l. 21), in Cic. (*ad Att.* xiv. 1, tu quaeso, quicquid novi, scribere ne pigrere), but is otherwise unknown. The same rule holds as to the Pres. Subj. 2d Person of *command* to a *definite* person: it is only thus used in the Comedians and in Cicero's Letters, *e.g. ad Att.* i. 17. 11, te si expectari velis, cures ut sciam. From the instances given, it is plain that in both cases this exceptional usage was colloquial, and not permitted in strict writing. R. 1600, n., r. 668, a. Cp. *Cluent.* l.c., § 135, consideres censeo. 31. **eamque . . . remittatis**: a dependent subj. of command carried on from the dependent prohibition *ne repugnetis*. Similarly in Eur. *Bacch.* 343, οὐ μὴ προσοίσεις χεῖρα, βακχεύσεις δ' ἰών; a command grows out of a prohibition. For **-que**, cp. note on *ac*, l. 27; and cp. Hor. *C.* iii. 30. 6, non omnis moriar multaque pars mei | vitabit Libitinam. After a negative sentence, where English requires an adversative particle, Latin frequently uses the copulative *et*, *que*, *ac*, *atque*. By the use of the latter the two sentences are placed upon the same footing: the former would be corrective, superseding the first by the second. *Sull.* § 36, qui vitam hominum . . . non nossent ac tantum audissent eos pari calamitate esse. R. 2200, r. 862, Madv. 433. 2. Similarly we find *et non*, *ac non*, after a positive clause, R. 2235.[1] **aut . . . aut** . . . 'either . . . or at any rate . . .'[2] So *Tusc. Disp.* i. 11. 25,

[1] Cp. Dr. Holden's note, *Planc.* § 70.

[2] V. Prof. Wilkins on *de Orat.* ii. § 18. Dr.[2] ii. § 343, l.c. α, denies that this is a separate usage—quoting *Tusc.* i. 3, ut non multum aut nihil omnino Graecis cederetur. Here however the second alternative is *stronger* and *demands* assent: 'Very little, if anything at all.'

aut beatos . . . aut non miseros. The second alternative is the weaker statement, and conciliates assent. Cp. *Div. in Caec.* § 41, aut nemo aut pauci, inverted in Greek ἤ τις ἢ οὐδείς. 'With resignation, if not with positive pleasure.' Contrast use in § 48, l. 16. 32. **dicam et diluam**, Indicatives, as **peroraro**, p. 3, l. 2; although the force of *postulo* extends to these dependent clauses, the Indic. is irregularly used: this is sometimes the case where the oratio obliqua depends on a verb in the first person, § 158 n.; *de Fin.* i. § 53, concedo . . cadere causa, si qui aliter existimant. This is the virtual explanation of the mood of *potuero*, p. 3, l. 14. For the combination of verbs cp. *Verr.* a. pr. § 33, dicendo ac diluendis criminibus contendere. 33. **sint**: the mood contrasts with that of **erit praeteritum**, p. 3, l. 2. It is to be explained (without regard to the oblique petition *ne . . subiciatis* of which it forms a part) as signifying 'hypothetical' as opposed to 'definite and particular' objections: while in the Indic. below Cicero's modesty admits that he would make actual omissions. 33. **taciti cogitationi vestrae subiciatis . . . [animo] requiratis**: Classen notes, '*Animo requirere* nihil aliud est, quam quod modo dixerat; *tacitum cogitationi subiicere*: quod enim inter ipsam defensionem iudices facere vetuit orator, id ut faciant absoluta oratione hortatur.' The identity of the expressions can scarcely be made out. The former of the two refers to any *damaging fact* which might occur to the listener's mind traversing the point which the orator had just made: the latter to the *explanation* of this fact which upon a retrospect of the speech the same listener might seek in vain. A concrete example may set the matter in a clearer light. Cicero alleges, as one of two probable motives which led Oppianicus to attempt the murder of Cluentius, his wish to possess himself of the property of the latter, an object which was to be consummated by the supplementary murder of his own wife Sassia, to whom it would pass by will. The juror might call up in thought (tacitus subicere) an adverse *fact*—O. would *not* gain, by Cluentius' murder and its supplement, his alleged object—the possession of his property. For there would remain two reversionary heirs (Cluentia, her daughter by Cluentius the elder, and, in the second place, her daughter by A. Aurius Melinus, who is mentioned in § 179). Cicero asks him to note the missing link in the argument (requirere) at the close, instead of mentally interfering with his argument as he develops it: that is (in the case supposed), to cast about for some *explanation* that might have been offered—such as, that a murder more or less was nothing to O., and he was prepared to send Sassia's heirs after her—and to note that it was not offered (animo requirere). If **animo** adds anything to the sense, it must express this evolution of a hypothesis in the juror's mind, which he seeks in vain in the orator's defence; v. crit. n. 33. **taciti**, of thought unexpressed: here applied to the personal subject, in p. 3, l. 6, to the thing: so Balb. § 2, 'opinio tacita vestrorum animorum' is opposed to 'perspicua admiratio': *Verr.* ii. 5. 182, 'tacitae et occultae inimicitiae' to 'indictae atque

apertae': infr. § 63, tacita vestra exspectatio. **Page 3**, l. 1. **ad extremum**: generally 'at the end' (so in § 50): here 'till the end.' So *Caec.* § 46, qui ad extremum usque contenderint. The other reading (v. crit. n.) would make *extremum* a neut. subst., 'the end,' sc. *causae*, which could hardly be omitted.

III. 7.—5. **ex contraria parte**, an adverbial phrase, 'on the other side.' Cp. *de Inv.* i. § 26, quod ab adversario potest ex contraria parte dici. So Liv. xxii. 59. 15, si ex altera parte cernatis stratas Cannensibus campis legiones vestras. 'A case of which these eight long years you have been hearing the other side.' **audiatur**: Pres. of an action which has continued from the past into the present. So Pres. with *iampridem*, etc., and in Greek with πάλαι; R. 1460, r. 596. 6. **tacita**, n. on p. 2, l. 33. 7. **qui** indefinite is generally an adjective, *quis* a substantive: but there is no rule absolute. Exceptions to the former usage are much rarer than exceptions to the latter: yet they occur even in Cic., unless we set aside the MSS. altogether. § 61, si qui ab illis quaereret: § 103, l. 12; § 105, l. 12. *Sull.* § 43, ne qui posset . . . meminisse: *de Or.* i. § 127, si qui forte sit tardior. *Aliquis* in the same way is both substantival and adjectival: **aliqui** (l. 12) is adjectival, and rare: § 113, l. 10, it is substantival, § 184 adjectival (v. note). In the neuter the forms are strictly distinguished. R. 380. r. 208.[1] 13. 'I am in great hopes that, if I can bring out in detail the points which are latent in my case [**explicare**], and can do them justice in their entirety by my advocacy, this court in which you are met, so far from being, as his enemies expected, a tribunal of impending doom to Cluentius, will prove the final haven of refuge to the long and sorely tried bark of his fortunes.' Tacite rogat ut causam patrono meliorem putent.—MAN. 14. **potuero**: for the mood cp. n. on p. 2, l. 32. 15. **eum**, taking up again the antecedent to *quem*, points the antithesis. Cp. *Sest.* § 59, amicitiae nomen ac societatis, quod armis violarat, id precibus est consecutus. Balb. § 20, si *ea* lex, *quam* nos haberemus, *eadem* . . . resedisset; *infra*, § 115, l. 3, *ea* . . . *eadem*.

8.—18. **dico**: for the pres. indicative cp. § 6, ante quam . . . incipio, and v. R. 1462, r. 598. 19. **communibus invidiae periculis**, § 4, l. 13. 20. 'Still, that I may not task your patience any further by my remarks, I shall address myself to the actual charge—appealing to you at the same time, gentlemen, as I feel I shall have to do more than once, to accord me the hearing which I might expect if the case were now being argued for the first time, as in fact it is, and had not been often argued before and always unsatisfactorily.' Cp. § 88. 21. **adgrediar ad crimen**: *Sest.* § 3, a. ad dicendum. **probata**, 'made good,' 'made out to the satisfaction of the public.' So § 138, iudiciorum quae probata non essent, 'trials which had not given satisfaction.' **crimen**, the charge of having bribed the jury (§ 9, ll. 30, 31); to be distinguished from the *veneficii crimina* (§ 1). This

[1] Kühner, i. § 141: in older Lat. *quis* and *qui* are used indiscriminately as subst. Holtze, i. p. 397. On *aliquis aliqui* v. Reid on *Cic. Acad.* ii. 61.

use of the pronoun or pronominal adverb (**illa** l. 21, **sic** l. 22) to anticipate a dependent sentence (which serves as its epexegesis) is very idiomatic: it gives rhetorical emphasis and distinctness, indicating as it does at the outset the course which the sentence will take. The *degree* of emphasis varies according to the context. Examples from this speech are *id* anticipating Acc. and Inf., § 138 init.: *id*que, ut facerem (oblique petition) § 49 fin.: *hoc* followed by *ut* in the Subj., by Acc. and Inf. (here less emphatic), by Acc. and Inf. (emphatic by contrast to *non hoc*, *ut* . . above) § 30: *hoc* followed by indirect question § 124 init.: *illud* by Inf. § 10, by finite verb § 89, *illud unum* by Acc. and Inf. § 119: by indirect question, § 123 init.: by *quod* with Subj. § 10. *eiusmodi* followed by *ut* c. Subj. § 135. Compare the use of *unum*, followed by Acc. and Inf. § 169 init. *Eum* fuisse, qui . . § 125; *eis* criminibus . . . ut . . § 20, where *eis*=*talibus*, is an instance of the highest degree of emphasis: *ita* ut . . § 112 et passim: *sic* quasi § 4: *ideo* quia § 123: *idcirco* ut . . § 146: **sic** with Inf. § 47 init. (v. n.) Two extreme instances may illustrate the wide applicability of the principle: *de Nat. Deorum*, i. § 38, *quo* quid absurdius quam res sordidas atque informes deorum honore afficere? where *quo*, the abl. of comparison, is explained by *quam* with Inf. *Rosc. Am.* § 60, *usque eo* . . . antequam. 24. **Hodierno die**: this pleonasm may have been due to the influence of the expressions pridie eius diei, postridie eius diei: besides hesterno die for heri. 25. **ipsius criminis**, v. crit. n. 26. 'Until now misconception and prejudice have been rampant in the case.'

I.—First division of the case, dealing with the 'invidia' against Cluentius, which rests upon the charge that he had procured the conviction of the innocent Oppianicus by bribery.

IV. 9.—30. **iudicium**, 'jury'; v. Glossary. 31. **quo** as a final particle (=ut eo) is rare except in conjunction with a comparative (as in quominus). Still it does occur without a comparative in the best Latin: and is common in Sallust, *e.g.* *Cat.* 23, nos arma neque contra patriam cepisse neque quo periculum aliis faceremus, where v. Mr. Cook's note for other exx.: Ter. *Andr.* 472; § 140, quo animi illorum iudicum . . . incenderentur; *Sest.* § 93, villa quam tribunus pl. pictam . . . explicabat, quo fortissimum civem in invidiam vocaret: *Verr.* ii. 1. 17, cum iste atque istius amici . . . sermones . . . dissipassent, quo animos testium retardarent. In the present instance, the words recur with little alteration in the subscriptio of the censor L. Gellius, § 131, 'quod is pecuniam accepisset, quo innocentem condemnaret.' They are evidently a reminiscence of the lex Cornelia quoted in § 148, 'quo quis iudicio publico condemnaretur,' in which the construction occurs a second time if the words quoted in Bruns' footnote are genuine. Madv. 440, b. 1.[1]

[1] Also Dr. [2] ii. § 541; Bruns, *Fontes Juris*, [3] p. 82, n. 3.

31. **Statium Albium** Oppianicum. Cp. § 65. 33. This is a good example of what the rhetoricians called *partitio*: and as such it is quoted by Quintilian (iv. 5. 11), who says that some criticised this division on the ground that it would have been enough for Cicero to establish his third point (iudicium illud pecunia esse temptatum . . . contra Cluentium) without proving the two former points. But the truth is that the third point is established by the help of the former two. 32. **atrocitatis**, 'virulence.' *Atrox* (connected with ater as celox with celer) must have meant originally, 'dull leaden black' (a fast colour); cp. atra tempestas, ater Cocytos: *niger* meaning 'glossy black.' In many of its applications the idea of *persistence* is prominent, *e.g.* Plaut. *Capt.* 534 (Ussing), nisi reperio atrocem mihi aliquam astutiam, of defiantly 'brazening it out' ['some double-dyed contrivance,' comically serious.—H. N.]: Hor. *C.* ii. 1. 24, praeter atrocem animum Catonis, of inflexible resolution: (we may compare the Platonic ἀνδρεία, which is compared to the fast colours of the dyer, δευσοποιὸν γίγνεται τὸ βαφέν, as being a conservation of imbibed opinions about danger, *Rep.* 429 E:) Verg. *A.* i. 662, urit atrox Iuno, equivalent to the 'memor Iunonis ira' of i. 4, in which *atrox* signifies 'relentless hatred.' And this is the sense of *atrocitas* here. 33. **innocentem pecunia circumventum**, 'this charge of compassing the ruin of an innocent man by bribery.'—P. Cp. the title of one of C. Gracchus' laws, *ne quis iudicio circumveniatur*. **Page 4**, l. 1. **maioribus criminibus**, v. n. on §4, l. 10. An abl. of attendant circumstances: cp. *Brut.* § 164, nulla est altercatio clamoribus umquam habita maioribus: 'on more heinous charges, or charges better attested.' 2. **praeiudicia**: 'previous judgments'; 'judgments which form precedents.' So Asconius on *Divin.* § 12 explains the word—praeiudicium dicitur res, quae cum statuta fuerit, adfert iudicaturis exemplum quod sequantur. The meaning 'prejudice' is post-classical. 4. **non modo** (*non*) **ab isdem, sed ne ab aliis quidem.** The negative after *non modo* (*non solum*) may be omitted when there is a negative in the latter member of the sentence, and *also* a predicate common to both members, but expressed (with the negative) in the latter of the two only. Cp. § 89, non modo causae, sed ne legi quidem quicquam . . . laxamenti datum est: § 178. Liv. i. 40, advenam non modo vicinae sed ne Italicae quidem stirpis (=qui non modo . . . stirpis esset). The force of the expressed negative extends to the former member of the sentence. R. 2240 c., r. 881 c.; Madv. 461 b., with obs. 1. 7. 'Not on the side of Cluentius but against Cluentius': so Mr. Nettleship would render **a Cluentio**, comparing Lucr. i. 693, nam *contra* sensus *ab* sensibus ipse repugnat, with Munro's note. A similar use of the preposition occurs in § 93 ad fin., 'non modo dicendi ab reo . . .' Peterson. Cp. also *Rosc. Am.* § 85, praeest huic quaestioni vir et contra audaciam fortissimus et ab innocentia clementissimus. This use of *ab* with *contra* seems technical, *e.g.* in the rhetorical treatise of Cornificius (*auct. ad Herenn.*) ii. § 12,

ab rumoribus dicemus, si . . .; contra rumores dicemus . . . si cet. [I see no reason for taking this otherwise than ' by Cluentius.' See §§ 4, 84, 104, 124, etc., where it is clear that Cluentius was charged with the bribery. —H. J. R.] 8. **tulerit**, ' Cp. *ad Fam.* i. 7. 6, quid res quid causa quid tempus ferat, tu optime perspicies, "what is involved in" ; thus here, " what lawfully belongs to the case as it really is " (ipsa).'—H. N. in P. In fact tulerit = attulerit, or secum tulerit ; v. Glossary. 9. **conflarit** : the word means properly (*a*) ' to blow into flame,' of lighting a furnace to fuse metal : (*b*) ' to smelt together,' of fusing the metal itself. Two metaphorical senses correspond : (*a*) ' to excite ' or ' work up,' *e.g.* conflare periculum ; *Rosc. Am.* § 5, eius rei quae conflavit hoc iudicium ; infr. § 18, malum conflatum et profectum ; § 79, illi iudicio invidiam infamiamque esse conflatam : § 95 : § 169 : (*b*) ' to work together ' or ' concoct,' as here, and *Lig.* § 34, consensum conspirantem et paene conflatum : frequently with a suggestion of *underhand dealing.* And in *Sest.* § 66, (quae ratio aut flandae aut conflandae pecuniae non reperiebatur), the word must denote the ' coining of base money,' in contrast with *flandae*, the regular expression for striking money, which latter appears in the title given to a triumvir monetalis, *auro argento aeri flando feriundo.* ' I shall enable you to judge of the composition of the case—which elements in it are the contribution of truth, which the importations of misconception, which the forgeries of prejudice.'

A. Crimes of Oppianicus.

10.—13. descenderit : this verb is often used in reference to the Forum and Campus Martius, which were on a low level as compared with the rest of Rome. *Phil.* ii. § 15, hodie non descendit Antonius, *sc.* in forum ; Hor. *C.* iii. 1. 10, descendat in Campum petitor ; *Sest.* § 88, descendit ad accusandum. Probably there is also an idea of ' descending into the arena ' of the law court or elections : cp. καθήκειν, καταβαίνειν. ' By my honour and responsibility as an advocate ' ; *defensioni* belongs to *fide* as well as *officio* : cp. § 118, fides huius defensionis, ' my loyalty in his defence.' 17. **satisfacere**, ' to act fairly by,' ' to do one's duty by ' ; an expression taken from business life. ' If I fail now to discharge the claims which Cluentius has upon me.' Cp. § 29, naturae et legibus s. f. **ni** rightly read by Classen : being equivalent in sense to *si non*, as Cicero and the Comedians use it. *Ni* generally introduces, with them, a negative condition, *nisi* an exception. Cp. the use of *ni* in a *sponsio* or wager, *e.g.* Plaut. *Epid.* 698, ni ergo matris filiast | in meum nummum, in tuum talentum pignus da, ' bet me a talent to my drachma, *if* she is *not* . . .,' *i.e.* ' I will bet you a drachma to a talent that she is . . .' Though ' an exception often has the effect of a negative condition,' and though later writers, such as Livy, neglect the distinction between *nisi* and *ni*, an original distinction in sense exists, as the following passage shows—Cic. *Off.* iii. § 113, decem illi, quos iuratos ad senatum misit

Hannibal, se in castra redituros, *nisi* de redimendis captivis impetravissent, *si non* redierunt, vituperandi. V. crit. n., and R. 1532, 1752, 1757, r. 640. [Mr. Roby does not distinguish *nisi* and *ni* so strongly.] 22. **incolumis** is strictly 'one who has not lost civil rights by a legal conviction': such loss being expressed by *calamitas* (*συμφορά* in the Greek orators), with which it is etymologically connected (v. Gloss. *calamitas*). Cp. *Arch.* § 9, Gabini quam diu incolumis fuit levitas, post damnationem calamitas. Hor. *Serm.* i. 4. 98—

incolumis laetor quod vivit in urbe ;
sed tamen admiror, quo pacto iudicium illud
fugerit.

et pro vivo, v. crit. n. 23. **ignominiae,** not technically used here. 'Need any one hesitate to speak . . ., speaking as he will be against a man whose conviction has placed him absolutely beyond the reach of dishonour . . ., and speaking (as I do now) for one on whom a reverse must entail the keenest sufferings of a sensitive mind and the gravest personal degradation?' 25. **offensio,** a *misfortune* (lit. *tripping up*) in the law court or at the comitia; metaphor from wrestling or running contests, cp. n. on § 10, l. 25. In *de Off.* i. § 71 (ubi v. Holden n.), coupled in the plural with *repulsae*, and means 'a defeat at an election.' Offendere (§ 63 *sub fin.*) is similarly used ; v. Gloss. 26. **et sine :** v. n. on § 3, *sub fin.*

11.—26. **Atque,** cp. n. on § 20, l. 32. 28. **gloria,** 'desire of glory,' 'vain ambition': a familiar example of the subjective use of what is properly an objective word. Cp. the use *indignitas*, 'unworthiness of treatment,' to signify 'indignation,' viz. the *sense* of such treatment : *veritas*, 'the *love* of truth.' There is more differentiation, a subtler analysis of terms, in modern than in ancient speech.[1] Mr. Nettleship quotes Rab. Post. § 38, quod genus tandem est illud ostentationis et gloriae? 30. **longius exordium petam** (cp. § 58, alte petito prooemio), 'shall carry you some way back for the commencement of my proof.' Cp. Verg. *Aen.* i. 262—

longius et volvens fatorum arcana movebo,

where **longius** (lit. 'further') means 'going into the future,' as here it means 'going into the past.' Here however it is an adjective, not an adverb: Quint. (iv. 1. 79), quotes the passage *paulo . . . intellegetis* to illustrate his doctrine, 'si *longior* sequitur ac perplexa magis expositio, ad eam ipsam praeparandus erit iudex.' 31. **ne patiamini,** cp. § 6, ne repugnetis, note.

V.—**Page 5,** l. 1. 'There was one A. Cluentius Habitus.' For the order of the words—the proper name being placed first—cp. the opening words of other *narrationes*, c. xv. § 43, c. xvi. § 46, *Rosc. Am.* § 15 (a very similar passage) : Liv. xxi. 8. 10, phalarica erat Saguntinis missile telum :

[1] Cp. Näg. § 17. 1.

'the Saguntines had a missile called *phalarica*.' Caes. *B. G.* vii. 55, Noviodunum erat oppidum Aeduorum.—'Initium narrationis quidam utique faciendum a persona putant . . . Hoc sane frequentissimum est, quia personae sunt, inter quas litigatur. Sed hae quoque interim cum suis accidentibus ponendae, cum id profuturum est' (Quint. iv. 2. 129, 130, illustrating by this passage the rhetorical arrangement—first the person, then the matter of suit). 2. **municipii Larinatis.** 'Larinum, the ruins of which now bear the name of Larino vecchio, was situated about twelve miles from the Upper Sea, on the right hand of the Tifernus (Biferno), which divided Apulia from the country of the Frentani'—Ramsay, who refers to Pliny (*H. N.* iii. 16), 'Larinates cognomine Frentani'; and Silius Italicus (xv. 565)—

quaque iacet Superi Larinas accola Ponti,
qua duri bello gens Marrucina, fidemque
exuere indocilis sociis Frentanus in armis.

3. **regionis et vicinitatis**: the use of a duplicate phrase where in a terser style a single word would have sufficed is characteristic of Cicero. Cp. such phrases as 'via atque ratio,' *method*; labefacto et infirmo, *I invalidate*; invidia et offensio (§ 69); vehemens et gravis (§ 77). 3. **nobilitas,** 'noble birth,' implies to a Roman something of what is conveyed to us by the idea of a 'title' or 'peerage': associated as it is with the *ius imaginum*, possessed by a family which could number curule magistrates among its ancestors. Cp. Sall. *Jug.* 85, quia imagines non habeo et quia mihi nova nobilitas est (Marius is the speaker). [The original idea is, that a man is *known* by having held office, etc.—H. N.] Juv. *Sat.* viii. 19—

tota licet veteres exornent undique cerae
atria, nobilitas sola est atque unica virtus.

V. Glossary: and n. on p. 28, l. 1, p. 42, l. 25. 4. L. Cornelius Sulla and Q. Pompeius Rufus were consuls B.C. 88: which year marks the outbreak of the First Mithradatic War, the invasion of Rome (held by the Marians) by the army of Sulla, and the close of the Social War. 5. The younger Cluentius was therefore born B.C. 103. 8. **tum,** 'at *that* time,' as opposed to his discreditable conduct afterwards. **inter suos et honesto et nobili**: *suos* and *suo* (l. 7), refer to different subjects, an irregularity which is allowed where no ambiguity can arise: here indeed the words are equivalent to qui adulescens . . . inter suos honestus . . . erat, which is perfectly regular. R. 2265, r. 894. **inter** implying '*eminence* among' is generally used with the Superlative Adj., as an equivalent of the Partitive Genitive: *Rosc. Am.* § 16, ipse honestissimus inter suos numerabatur. For the Positive cp. *Flacc.* § 52, inter suos nobiles. [**Honestus,** 'distinguished,' 'reputable,' Germ. *angesehen.*—H. N.]

12.—10. **importunae**: from the negative sense 'inconvenient,' 'un-

favourable,' the word acquires a positive sense 'monstrous,' 'unnatural' ('*ungeheuer*'); v. Gloss. 11. **coniunctus** with simple Abl. (of means): Mr. Nettleship compares *de Orat.* i. 17. 243; *Fam.* v. 13; *Phil.* iii. § 35; Verg. *Aen.* x. 653. V. crit. n., with R. 1216, r. 499. V. crit. n. on the sense of this sentence. 14. **ita de suo scelere audiet**: such an expression explains the phrases *bene*, *male*, *audire* (sc. *de se*), 'nor shall she ever, in hearing the story of her portentous wickedness, relinquish her natural title.' 17. **nunc cum maxime,** 'now as much as ever'; an elliptic expression, equivalent to 'nunc cupit cum maxime cupit.' Sometimes *cum maxime* is used alone in much the same sense: cp. Liv. xxix. 17. 7, 'quae aut ab illis passi sumus aut . . . nunc cum maxime patimur' with *ib.* 20, 'omnia . . . passi sumus et cum maxime patimur.' Also *Harusp. Resp.* § 32, verum tamen antiqua neglegemus: etiamne ea neglegamus quae fiunt cum maxime? In Tac. *Ann.* iv. 27, coeptantem cum maxime coniurationem disiecit (quoted by P.), *cum maxime* is equivalent to *tum cum maxime*, 'at that very moment'; v. R. 1641, r. 683. 1. 19. **igitur,** resumptive after the parenthesis. 20. 'Enamoured of her son-in-law—an unhallowed passion—.' 21. *se* **continebat**: v. crit. n. 22. 'Wesenberg says that Cicero always writes *efferri laetitia*, but *ferri libidine cet.*: *Quinct.* § 38, qui usque adeo fervet ferturque avaritia; *Cluent.* § 199, ferri crudelitate et scelere: cp. Auct. Bell. Alex. 20, cupiditate pugnandi ferebatur: Verg. *A.* ix. 354, nimia caede atque cupidine ferri'; H. N. in P. Cp. *Sest.* § 111, latus odio (with Dr. Holden's reff.). [**Cupiditas** common in Cic. as 'passion,' both in sing. and plur.—H. N.] 23. **pudor** animi, **pudicitia** corporis.—MAN. 'No thought of modesty or of her own honour, of the dictates of natural affection, or the stain upon the family name, no thought of what the world would say,' etc. 24. **dolor,** 'indignation.' Verg. *A.* ix. 66—

ignescunt irae; duris dolor ossibus ardet.

V. Ramsay's note on the difference between *dolor* (aegritudo crucians) and *maeror* (aegritudo flebilis), 'the former denoting the fierce pangs of manly grief in the son, the latter the more gentle and subdued misery of the daughter': noticing at the same time that in p. 5, l. 28, *dolor* is applied to the indignant grief of the woman.

13.—26. **consilio ac ratione,** 'worldly wisdom and prudence.' Cp. n. on § 11, l. 3. 27. **capi,** 'to be entrapped' to one's harm, whereas *decipi* is simply 'to be taken in.' Cp. Lucr. i. 940, of the wormwood draught administered to a child in a sugared cup—

ut . . . . . . perpotet amarum
absinthi laticem *deceptaque* non *capiatur.*

Sall. (*Catil.* xv.), has a very similar passage—maxime adulescentium familiaritates appetebat: eorum animi molles et aetate fiuxi dolis haud difficulter *capiebantur.* [*De Off.* iii. § 70, 'vti ne propter te fidemve tvam

captvs fravdatvsve sim,' an old formula. *Captio* is used in the Digest in the sense of 'deception to one's hurt.'—H. J. R.] **illa aetas**=homines illius aetatis. An instance of 'res pro persona' or abstract for concrete. The original and most frequent case of this usage is that in which the Genitive of the person is subjoined—

virtus Scipiadae et mitis sapientia Laeli

(as if we had here hominum illa aetas: cp. *Sest.* § 88, huic gravitati hominis). Lastly we have the Abstract Subst. used *alone* and unqualified for the concrete: as in the *locus classicus*, Catil. ii. § 25, ex hac parte pudor pugnat, illinc petulantia cet. 28. **communi dolore muliebri,** 'the anguish which any woman so cruelly wronged by a husband would feel': *communis* contrasts the *general* rule with the particular case. Cp. § 4, § 119. **in**: 'in the case of' 'in connection with' ἐπὶ τοιούτοις τοῖς ἀδικήμασι: so 'at.' § 51, si *in* minus firmis hominum periculis non defuissem. Hor. *C.* i. 17. 19, dices laborantes in uno Penelopen vitreamque Circen. Prop. iv. 18. 28, vesanum in vite Lycurgum (v. Prof. Postgate's *Selections*, p. cxix). 29. **pelicatum** in its strict sense. Aul. Gell. iv. 3, antiqui eam proprie pelicem nominabant, ut ait Sex. Pompeius, quae uxorem habenti nubebat. Cp. § 199, filiae pelex, 'mistress of her daughter's husband.' The word is used here, moreover, with reference to pellexit (l. 26).

14.—33. **Ecce autem**: used in a colloquial style; marks vividly a transition to a fresh inference, or (as here) to a startling incident. So § 75, ecce tibi eiusmodi sortitio; Verg. *A.* ii. 203, ecce autem gemini a Tenedo . . ., where Servius notes, 'cum ex improviso vult aliquid ostendere, *ecce* ponit'; *Verr.* a. pr. § 17, ecce autem repente . . . eadem illa vetera concilia repetuntur; Liv. vii. 35. 10, ecce autem aliud minus dubium, where attention is called by the speaker to a fresh inference. It is also frequent in Plautus. **autem**, originally 'again,' Gk. αὖ, αὖτε. **Page 6**, l. 2. **ut in t. i.**: 'considering the magnitude of her wrongs'; *in*, as in l. 28 *supr.*, gives the circumstances or condition. 4. 'Could not contain her delight, but revelled in this conquest, not of her passion but of her daughter.' V. crit. n. here. 5. 'That her honour should any longer be compromised by vague insinuations,' **fama** =fama pudica: cp. Prop. v. 11. 12 (Cornelia of her children), famae pignora tanta meae. 6. **lectum genialem**: to which the bride was conducted on the evening of the marriage day by the *pronuba* (in this case Sassia, her mother), after she had retired from the bridal feast. Rich. *Dict. Antiq.*, *lectus* p. 375.—Not merely this, but it would seem that the mother actually prepared the *lectus genialis* in the *atrium* on the day of her daughter's marriage: v. Ov. *Heroid.* viii. 95, nec pacta marito | intravi thalamos matre parante novos. 9. **nullis auspicibus**: the commentators refer to Cic. *de Div.* § 28, 'nihil fere quondam maioris rei, nisi auspicato, ne privatim quidem, gerebatur: quod etiam nunc *nup-*

tiarum auspices declarant, qui re omissa nomen tantum tenent.' Thus at this time there was no actual taking of auspices. The old name survived: but the 'auspex' merely acted as witness to the signature of the marriage settlement (tabulae legitimae). So Juvenal (*Sat.* x. 335), in describing the preparations for the marriage of Messalina with Silius, has the words—

ritu decies centena dabuntur
antiquo, veniet cum signatoribus auspex,

and Suet. *Claud.* 26 on the same event: 'quam cum comperisset C. Silio etiam nupsisse dote inter auspices consignata supplicio adfecit.'[1] **nullis auctoribus**: 'According to Roman law a woman was never regarded as completely *sui iuris*. She was always *in potestate parentis* or *in manu viri* or *in tutela*. Hence, strictly speaking, she could perform no legal act without the sanction of her husband or of her guardian, as the case might be, and the person or persons who gave this sanction became Auctor or Auctores of the transaction': (Ramsay, who quotes Liv. xxxiv. 2, maiores nostri nullam, ne privatam quidem, rem agere feminas sine auctore voluerunt: in manu esse parentum fratrum virorum). So too a son subject to *patria potestas* cannot marry without an *auctor*, who will be his father: he must marry de consensu patris. *Sest.* § 6, eo (sc. patre) auctore duxit . . . C. Albini filiam. Ter. *Adelph.* 670,

quis despondit? quis dedit?
quoi quando nupsit? auctor his rebus quis est?

VI. 15.—11. **O mulieris . . . nuptiarum,** quoted by Quintil. iv. 2. 105, as an example of an *excursio* or digression in the course of a *narratio*, answering to his requirement that it should be 'short and such that the speaker seems to have been carried out of his course by the intensity of his emotion.' 11. **praeter hanc unam**=praeter huius unius scelus, according to the *form* of the sentence; a good instance of brachylogy in an expression of comparison (*comparatio compendiaria*). Cp. ὁμοῖα νοήματα Πηνελοπείῃ (Hom. *Od.* ii. 121)=ο. ν. νοήμασι Πηνελοπείης. At the same time *mulieris scelus*=*mulierem scelestam* (with which *hanc unam* accords) according to the *sense* of the sentence. For *mul. scelus* cp. n. on illa aetas, § 13. 12. **in omni vita**: Tibull. ii. 1. 37, his *vita* magistris | desuevit querna pellere glande famem; Verg. *A.* vi. 663, inventas aut qui *vitam* excoluere per artes; Mart. viii. 3. 30, agnoscat mores *vita* legatque suos = human life generally. (H. N. in P.) **nonne timuisse**: for *nonne* (instead of the more usual *non*) with Inf. of exclamation cp. Lucr. ii. 14 *sqq.*, O miseras hominum mentes, o pectora caeca! | qualibus in tenebris . . . degitur hoc aevi quodcunquest! *nonne* videre | nil aliud sibi naturam latrare . . . ? On the Inf. v. R. 1358, r. 538. V. crit. n. 14. **faces,** carried before the bride in the nup-

[1] V. also Mayor's note on Juv. *Sat.* x. 336; Plaut. *Casin.* 85; Ramsay, *Antiq.* p. 423.

tial procession; **cubiculi**, *i.e.* of the thalamus nuptialis; **cubile**, the lectus genialis. In **limen** there is no special reference: except in so far as a stumble on the *threshold* in going in or out of the *house* was always unlucky (cp. the story of Tib. Gracchus stumbling as he left his house on the day of his death, Plut. *Tib. Gr.* c. xvii.), and to guard against such an accident the bride was lifted over the threshold as she entered the house. V. Ramsay, *Ant.* p. 424. 16. **parietes ipsos**: for the idea of 'stones crying out,' cp. Aesch. *Ag.* 36,

οἶκος δ'αὐτὸς εἰ φθογγὴν λάβοι
σαφέστατ' ἂν λέξειεν,

and Eur. *Hipp.* 416,

βλέπουσιν εἰς πρόσωπα τῶν ξυνευνετῶν
οὐδὲ σκότον φρίσσουσι τὸν ξυνεργάτην
τέρεμνά τ' οἴκων μή ποτε φθογγήν ἀφῇ,

the latter of which may have been in Cicero's mind. 17. **vicit pudorem libido, timorem audacia, rationem amentia**: this arrangement of words, the verb being placed first or last to hold the parts of a divided statement together, is called *adiunctio* by the rhetoricians (Cornif. iv. § 38; Quint. ix. 3. 62, who quotes this passage, with *Catil.* i. 22, where the same three substantives appear—neque enim is es, Catilina, ut te aut pudor umquam a turpitudine aut metus a periculo aut ratio a furore revocaverit). Cp. n. on *coniunctio*, § 1, l. 16. Cicero is partial to triplets in asyndeton: cp. p. 5, l. 3, virtute existimatione nobilitate: also § 9 *ad fin.*; § 14 *ad fin.*, and next line. We find the same employed with fine effect in Hor. *C.* iv. 9. 39—

consulque non unius anni,
sed quoties bonus atque fidus
iudex honestum praetulit utili,
reiecit alto dona nocentium
voltu, per obstantes catervas
explicuit sua victor arma.

18. **pudor** revocat: **timor** deterret: **ratio** dissuadet.—MAN.

16.—18. V. crit. n. **graviter**: for the emphatic position of the adverb cp. *familiarissime*, § 46, l. 19, and v. Dr. Potts' *Hints towards Lat. Prose Comp.*, p. 55. 21. **nihil sibi . . . gravius . . . esse faciendum quam ut . . . ne**: cp. § 6, *hoc* postulo . . . *ut ne*, § 168, *quod fuit viri optimi* fecisti *ut ne* . . . The ordinary rule is that *ut ne* is used only in *final* clauses: *ut non* only in consecutive clauses. The former part of the rule will not hold: as appears from *Fin.* ii. § 24, ex quo efficitur, non *ut* voluptas *ne* sit voluptas, sed *ut* voluptas *non* sit summum bonum, compared with *ib.* § 15, e quo efficitur, non ut nos non intellegamus sed ut . . . In § 24 Madv. says there is a hint of intention or wish in *ut ne* (non efficitur, quod vultis, ut ne . . .); but the above comparison shows that this is arbitrary. The fact would seem to be that *ut ne* can be sub-

stituted for *ut non*, but only when the consequence vanishes into an *explanation*. The Grammars do not assign sufficient prominence to this occasional force of *ut* (and *ut non*). Cp. the exx. in Zumpt, § 623; which are there explained as *consecutive*, depending on the idea of *happening* in the principal verb: novum est, rarum, naturale, necesse, usitatum, mirum, singulare est, non veri simile est, etc., are all used with *ut*, which should be called *explanatory*, and frequently is anticipated by a neuter pronoun *hoc illud* etc.; *Div. in Caec.*, § 23, solum id est, ut me Siculi velint.—In *Rosc. Am.* § 20, hoc *ita* est utile, *ut ne* plane inludamur ab accusatoribus, the *ut ne* is equivalent to *ut non*, and explanatory (of *ita*) rather than *final* (R. 1636, 1638, r. 682 a); and so in many cases in which *ut*, preceded by *ita* or not, gives a restriction. V. R. 1650, 1704, r. 682, 684, 714.[1] [On Cic. *Fin.* ii. § 24, v. R. 1700. A result may be spoken of as simply a resulting fact, or as a purposed result. In some forms of expression either *ne* or *non* is applicable. I should express Cicero's use of the two in some such way as this, 'The result is not to make pleasure cease to be pleasure, but to show that pleasure is not the highest good.'—H. J. R.] 23. **ne quae**: v. crit. n.

17.—31. **communibus hominum sensibus**: '*de Orat.* iii. 195, ea sunt in communibus infixa sensibus. V. Munro on Lucr. i. 422' (H. N. ap. P.): used both in Sing. and Plur.: (1) 'the sense or instinct given by nature to all sane men.' (2) A distinct meaning is 'the *social* sense'—an 'acquired feeling of the common duties and proprieties expected from each member of society.' A good ex. of this is Sen. *Ep. Mor.* i. 5. 4, hoc primum philosophia promittit, sensum communem, humanitatem et congregationem. Hor. *Sat.* i. 3. 65, forte legentem | aut tacitum impellat quovis sermone molestus: | '*communi sensu* plane caret,' inquimus: where Prof. Palmer tr. 'ordinary tact.' In *neither* sense should it be translated 'common sense.'[2] 31. **atque in ipsa natura**, not 'the natural constitution of man' necessarily. Cic. often couples *natura rerum* with *communis sensus*: *de domo* 97, infitiari me esse hominem et communem naturae sensum repudiare: *de Fin.* 4. 55, sensus cuiusque et natura rerum atque ipsa veritas: as we might say 'a law of human nature—nay, a law of the universe itself.' Tr. 'a principle which has its roots deep in the common feelings of humanity and in fact in the very laws of Nature.' V. crit. n. 32. **id** takes up *hoc*: cp. § 137, where *id* is resumed by *id*: and n. on § 7, l. 15. 33. **qui . . . adiungerer**: 'who am retained for the defence of those imperilled by actions at law.' (P.) The tense is due to the attraction of si . . . viderem. Cp. *pro Sull.* § 35, si Torquatus Sullam solum accusasset, ego quoque hoc tempore nihil aliud agerem, nisi eum qui accusatus *esset*

[1] On this subject consult especially Mr. Reid on *Sull.* § 27 (and his promised note on *Fin.* ii. § 15); also v. Madv. § 456. 4, Dräg. 411, 542, 562.

[2] Aristotle's κοινὴ αἴσθησις—the central sense of the special sensations—is not to be confounded with this (v. Wallace, *Outlines*, § 44).

[for *est*] defenderem. For the mood v. R. 1714, r. 718. [The double use of **hominum**, in this and the preceding line, is clearly purposed. No one is a fit advocate in men's dangers, who does not see what is part of men's nature.—H. J. R.] **ad hominum pericula defendenda** : cp. the equivalent expressions alicuius periculum depellere, amicorum pericula propulsare (*Sest.* § 2 ; *Phil.* vii. § 7; *Cluent.* § 144). V. crit. n. **Page 7,** l. 2. A kind of Aposiopesis—'quae vero nec ferri possunt nec taceri, eloquenda,' or some such words, might supply it.

18.—5. **conflatum et profectum** : v. crit. n. for the meaning. 6. 'Allow the veil of reticence, if not of oblivion, to cover them,' P. 7. V. crit. n. 9. **periculum** (cp. *hominum pericula* above) refers, as often elsewhere, to the particular danger of a criminal trial. Originally, as a verbal subst. from *peri-ri 'to try,' it denotes 'trial,' and by implication of failure 'danger.' Cp. Mr. Reid on *Arch.* § 13: the Eng. *danger* (Low Latin *dangiarium* from *dominium*, feudal authority) was originally a legal term : Shakesp. *Merchant of Venice*, IV. i., 'you stand within his danger.' 11. **adornata . . . instruitur . . . comparatur** : the same words are used in a somewhat different collocation *infra*, § 191, totius denique huius ab illa est et inventa et adornata comparatio criminis. Cp. also **instituit** accusatores **instruit** testes with § 192, his rebus instructum accusatorem, conquirendorum testium causa : and some other correspondences. We can only distinguish the words thus : *comparo* is to 'provide' or 'levy,' *instruo* and *adorno* to 'equip' and 'set on foot' what has been provided ('to place on a war-footing') (cp. *Rosc. Am.* § 30, testes in hunc et accusatores huiusce pecunia comparant), *instituo* to 'drill'—cp. *Phil.* xi. § 33, Deiotari regis . . . magnus et nostro more institutus exercitus : a military term, as are the other three. V. Mr. King on *Phil.* l.c. 15. The accused appeared in court in mourning (*sordidatus*). So § 192, where v. n. Such appeals to the feelings of the jury were considered perfectly legitimate. V. Ramsay's note: also Heitland, Cic. *Mur.* Appendix A, 'On the Spirit of Roman Trials.' **exitium exoptat** : alliteration. 18. **temere appellari**, 'that I do not know what I am doing in introducing her name into the case.' [**Temere** prop. = 'in the dark,' so here 'that my act is blind, reckless, wanton': metaphor kept up in **perspexeritis** and **aperta**.—H. N.] Same root in *tenebrae*. *Appello* always implies a *personal* address, and is generally qualified by an adverb or adverbial phrase, *e.g.* *comiter* (*Phil.* xiii. § 4) *asperius* (*leg. agr.* ii. § 63) and *honoris causa* passim : cp. also *Catil.* ii. § 12, quis eum senator appellavit? quis salutavit? quis denique . . . aspexit? To salute *by name* was a special compliment, to attack *by name* an act of declared hostility. 22. **summatim**, v. n. on *strictim*, § 29.

VII. **19.**—21. **constantiam . . . accusationis**, 'the resolute attitude of A. Cluentius and the motive of the prosecution': cp. l. 29, quam constanter et quam diligenter.

20.—27. 'And the matter was one not of inference but of palpable

ocular demonstration.' **Coniectura** from *conicio*, properly 'to put two and two together' (as we say), *i.e.* 'infer,' in the way of logical conclusion, as often as in the way of guess-work. For the rest cp. *Sest.* § 69, quae cum res iam manibus teneretur, for a different use of the phrase—'when the business was well in hand': for the present use cp. manifestus (= manu *festus* from ferire) properly 'struck with the hand,' cp. Germ. *handgreiflich.* (R. 704 n.) Also Vergil's

ante oculos interque manus sunt omnia vestras. (*A.* xi. 311.)

32. **evitaret,** ἅπαξ εἰρημένον in Cicero's *Orations.* 'Might escape at once and for ever' (Ramsay). Cp. ne vitationem quidem doloris ipsam per se quisquam in rebus expetendis putavit, nisi etiam evitare posset, *Fin.* v. § 20 (Madv.). **atque** (as a connection between sentences) has three main uses: (*a*) explanatory, 'and indeed,' 'and to make this clearer,' cp. § 19; (*b*) consecutive: 'and so'; (*c*) augmentative, 'and, what is more,' §§ 11, 20 (the present passage), 28, 43, 56 n., 75. In its origin (*ad,—que*) appears its proper force—to subjoin an additional fact or thing with some emphasis. **Page 8,** l. 1, **potuerit,** an aorist, R. 1516, r. 624. 3. **rebus,** 'position,' 'situation.' Caes. *B. G.* ii. 24, desperatis nostris rebus domum contenderunt. Liv. v. 11, xxxvi. 31, trepidi rerum suarum (H. N. ap. P.). Add Hor. *C.* iii. 3. 59, rebusque fidentes.

21.—8. 'Asculum Picenum, the chief town of the Piceni, situated on the right bank of the Truentus (Tronto), less than twenty miles from its mouth. There is a modern Ascoli of considerable importance on the same site. . . . This Asculum is chiefly celebrated in Roman history as the place where the standard of revolt was first raised by the Italian States in the Social war, 90 B.C. . . . It was besieged and taken, after an obstinate resistance, by Q. Pompeius Strabo, when Consul 89 B.C., who treated the inhabitants with all the cruelty which characterised the struggle. His triumph is recorded in the Fasti Capitolini as having been celebrated at the end of December in 89 B.C.: CN. POMPEIVS. SEX. F. CN. N. STRABO. COS. A. DCLXIV. DE. ASCVLANEIS. PICENTIBVS. VI. K. IAN. Asculum Picenum must be carefully distinguished from Ausculum in Apulia, on that branch of the Via Appia which led to Canusium . . . and celebrated in Roman history on account of the battle fought with Pyrrhus, 279 B.C.'—Ramsay (with modification). **Q. Sergi eius qui inter sicarios damnatus est:** Zumpt conjectures very plausibly that Sergius had by this maltreatment of Aurius made himself amenable to a certain clause of the lex Cornelia de sicariis et veneficis, to which Apuleius alludes thus—'prudens crimen Corneliae legis incurram, si civem Romanum pro servo tibi vendidero' (*Metam.* viii. 24). The offence was known to Roman lawyers as '*plagium*' or 'kidnapping,' and there was a lex Fabia, passed some little time before B.C. 100, which dealt with it. Sulla probably embodied one of its clauses in his Statute on Murder, dealing only with those who enslaved a free Roman citizen, and inflicting the *capital* penalty, whereas

the penalty under the lex Fabia varied according to the circumstances of the offender and his victim. We have another instance of 'plagium' in § 162. Cp. Zumpt, ii. 2. 36: Mr. Heitland, *pro Rabir.* appendix d. 9. **inter sicarios damnari**: similar expressions are *quaestio* (§ 147), *iudicium, inter sicarios*: *inter sicarios deferre, accusare, defendere.* There was no substantive to denote the crime which came under Sulla's law 'de sicariis': and this clumsy expression supplied the deficiency. Cp. *Rosc. Am.* § 90, qui inter sicarios et de veneficiis accusabant. *Inter sicarios deferre* is commonly explained as an abbreviation of ita deferre ut nomen alicuius inter sicarios referatur—'to accuse a man as being among the number of assassins': *quaestio i. s.* would be 'a judicial inquiry as to those who are thus numbered.' But the expressions *inter lignarios* (Liv. xxxv. 41), *inter falcarios* (*Catil.* i. § 8), meaning respectively 'in Joiner Street,' 'in or to Scythemaker Street' (as we might say), seem to suggest that *inter sicarios* is a quasi-local designation, applied attributively to *quaestio* first, 'the Assassination-Court'; then used with verbs, 'to accuse or defend in the Assassination-Court,' *quaestione* being understood. **sicarius** is simply 'murderer,' the later *homicida*; it is by no means limited to the sense of 'professional assassin,' or that of 'one who uses the *sica* or short dagger,' the stiletto of that day (although the word used is characteristic of the times in which this Statute on Murder was drafted): accordingly Quint. defines 'sicarii' as 'qui caedem *telo* quocumque commiserint,' *telum* again being defined by the lawyers as 'quod mittitur manu,' and in fact denoting every offensive weapon. Quint. x. 1. 12. 13. **illum**, deictic: Oppianicus was in court. 14. We may observe that the use of *nepos* for 'nephew' is post-classical. 16. **neque obscurus neque incertus**: 'a known man' (Ry.) 'and one who spoke to the point.' Cp. Hor. *C.* i. 7. 28, Certus enim promisit Apollo; *Rosc. Am.* § 62, neque testis incertus auditur, 'no half-and-half evidence is admitted.' *Certus* is used both of things and persons, 'unhesitating,' and hence 'trustworthy.' Cp. *falsus*, similarly applied both to witnesses and testimony. 17. **Ager Gallicus**, a strip of land on the Adriatic coast, between Ariminum and Ancona, in which the Gallic tribe of the Senones had formerly settled. In § 23, **Gallicanum** probably (as P. suggests) denotes an inhabitant of this district. Cp. Cic. *Catil.* ii. § 5, prae *Gallicanis* legionibus et hoc dilectu quem in *agro* Piceno et *Gallico* Q. Metellus habuit, where *Gallicanis* = 'stationed in Cisalpine Gaul,' not 'Gallic' in general. 22. **tamen**: 'the one poor survivor of a numerous family': 'consolandi et quasi deliniendi vis,' Classen: referring to *Div. in Caec.* § 48, ex eo, quod ipse potest in dicendo, aliquantum remittet, ut tu tamen aliquid esse videare, 'something (little though it be).' *Rosc. Am.* §§ 8, 104, *Quinct.* § 80, *Ligar.* § 34. Add *Sest.* § 63, senatu, quo si tum veniret, me tamen socium suorum in re publica consiliorum videre posset, 'at any rate,' *i.e.* when everything else failed (Holden). In such cases a *quamquam* clause is understood or implied; as here *ex multis*

implies, quamquam multi sublati erant. So ἀλλά is used: *ἔδωκας ἡμῖν ἀλλὰ σὺν χρόνῳ χαράν*, Soph. *Tr.* 201, 'at length, though late,' *εἰ μὴ πρότερον* being the ellipse. 23. **oppressa morbo est**: according to § 40 she was poisoned by Oppianicus. 26. **his diebus paucis**, 'a few days after this.' Cp. Plaut. *Poen.* 871, his duobus mensibus 'in the next two months,' 'in two months' time from now': v. § 35, decem illis mensibus, 'in the next ten months,' 'in ten months' time from then': § 37, brevi illo tempore, 'a short time after that': § 108, paucis illis diebus, 'a few days *after* that time.' All these are Ablatives of 'time in the course of which.' R. 1182, r. 492. The Pronoun seems to be used in agreement by a kind of attraction, for ab hoc tempore, ab illo tempore, respectively. Only the *context* decides whether the time is reckoned *before* or *after* the given date: as is seen by comparing *Verr.* iv. § 39, paucis illis diebus, meaning 'a few days *before* that time,' with the last preceding example.

VIII. 23.—30. 'Being a man of unique wickedness and daring.' **ut erat** with the Abl. of quality is a common equivalent for *quippe qui esset* with an Adjective. Cp. p. 27, l. 20, Sall. *Iug.* 7, Iugurtha ut erat impigro atque acri ingenio. 32. **Gallicanum**, v. *supra*. 33. Who is this A. Aurius? Two passages, § 25, Aurium illum . . . et alterum Aurium et eius L. filium; and § 11, A. Aurio Melino . . . adulescenti in primis, ut tum habebatur, inter suos et honesto et nobili, must be compared, together with § 26, Sassiam . . . cuius virum A. Aurium occiderat, before we endeavour to answer this question. A. Aurius has been confidently identified by Classen with A. Aurius Melinus, whom we know Oppianicus to have murdered (§ 26). He argues: (*a*) that A. Aurius Melinus *must* have been one of the three Aurii put to death together (§ 25): (*b*) that he cannot be the 'alter Aurius' who had a full-grown son, for in § 11 he is called *adulescens*, which is applicable to 'a man of 30 to 40 years of age, but not upwards.' And the father of such a son must have been over 40. (*c*) Therefore A. Aurius Melinus is to be identified with A. Aurius here. There are one or two weak points in this. We have no right to assume (*a*): Sylvius may be right in suspecting that A. Aurius Melinus was murdered at some other time: we do not necessarily know every Aurius and Auria then in existence, and their pedigree; *e.g.* Oppianicus' brother was married to an Auria otherwise unknown (§ 31). But if we assume that Melinus was one of the three Aurii proscribed, we may, with Ramsay, dispute (*b*). L. Aurius may have been a mere child of four or five, the issue of the marriage of A. Aurius Melinus with Cluentia: even if this be not so, he may have been the son of a previous marriage of Melinus (which might be easily assumed); Melinus might thus be still 'adulescens' in the sense assigned by Classen. But the word cannot be thus limited in its application. If then Melinus is the 'alter Aurius,' A. Aurius is a distinct person *introduced for the first time.* The language of the passage seems to

support this view. Moreover Cicero 'never would have spoken so respectfully—vir fortis et experiens—of the incestuous husband of Sassia, whom he (§ 11 *ad fin.*) characterises simply as an *adulescens* of excellent character *at the time* of his union with Cluentia.' A. Cluentius the elder died B.C. 88: his daughter married A. Aurius Melinus shortly after (*brevi tempore*), and was divorced in two years' time (§§ 11, 14). Thus there was ample time for the loss of A. Aurius Melinus' good name before the events of this proscription at Larinum (B.C. 83). V. Ramsay's note. **Page 9,** l. 6. **experiens**: 'energetic,' 'enterprising.' Cp. *Verr.* iii. § 53, homo gnavus et industrius et experientissimus arator. So Verg. *G.* i. 4, apibus quanta *experientia* parcis, 'What a spirit of venture bees exhibit'—so Prof. Nettleship paraphrases. *Experientia* in Cicero and Augustan writers generally denotes the 'act of making a venture,' not 'experience,' which is *usus*. **nobilis**: cp. n. on *nobilitas*, § 11. 8. **clarissima voce**, sc. ut omnis contio audire posset (§ 134). 15. **denuntiarat**, technical term for 'giving notice of a prosecution.' **minis insequi**: cp. *Sest.* § 25, non modo negando sed etiam inridendo insequebantur, 'set down, snubbed them,' as Dr. Holden translates. 'Began to bully him with loud threats.' As to the order of the words, cp. n. on p. 1, l. 15. 16. Q. Caecilius Metellus Pius, son of Metellus Numidicus of the Jugurthine war, as praetor in B.C. 89, took part in the Social war: during the revolutionary government of Cinna was an exile: but joined Sulla (returning from the East) at Brundisium B.C. 83. For further information consult *Class. Dict.* 'Metellus' (12).

25.—17. 'Which attested at once his guilt and his guilty conscience.' Cp. Glossary, *conscius*, *conscientia*. 19 **per illam Sullae vim**: for this use Mr. Nettleship compares *de Div.* ii. 27, per somnum, and *Fam.* xvi. 8. 1, per hiemem, 'during the time of' (P.). But **per** may be instrumental, as in the phrases per me licet (v. p. 41, l. 23), per me stat quominus, . . . '*took advantage of* the reign of terror . . . to swoop upon Larinum.' For this use of *per* with a non-personal subst., cp. *Fam.* xvi. 7, cum commode et per valetudinem et per anni tempus navigare poteris, 'when your health and the season will allow you to make the voyage.' 21. **quattuorviros**, 'Council of four': their full title was IV. viri iuri dicundo: they were the highest magistrates of a municipium or colonia, and held office for a year. In some cities there were *duumviri*: cp. *leg. agr.* ii. § 93, cum ceteris in coloniis duumviri appellantur, hi se praetores appellari volebant, of the self-important magistrates of Capua (a colony). 24. **periculum**, cp. n. on p. 7, l. 9. **alterum Aurium**, n. on § 23. 25. **sequestre**: v. Gloss. 29. **iudicio**, of Oppianicus. 30. **potuisse arbitretur**: v. crit. n.

IX.—26. **Atque**, v. n. on § 56. 32. **aliquando**, 'at length': cp. § 191, quibus finem aliquando non mulieris modus . . . fecit. Not '*ever*,' 'at any time,' which in a negative sentence would be *unquam*.

26.—Page 10, l. 1. 'It is hard to say which was the greater: his

indecency in making the proposal, or her heartlessness in the event of her accepting him.' The original form of an alternative question was of this type (frequent in Plaut. and Ter.), *Utrum* strictim*ne* attonsurum dicam esse *an* per pectinem nescio (Plaut. *Capt.* ii. 2. 18): lit. 'I do not know which of the two [is true], whether (*-ne*) . . . or (*an*) . . . *utrum* being Neut. Sing of uter. Then the *-ne* came to be omitted, and utrum to be considered = 'whether.' 4. **sed tamen,** δ' *οὖν*, resumptive: 'however.'

27.—7. **admiratur**: of unpleasant surprise here: a rare use. Cp. *Phil.* iii. § 18, admirabilem impudentiam audaciam temeritatem. 8. V. crit. n. 9. **reformidat,** 'recoils from the vision of.' 10. **respondit**: for the tense v. crit. n. on § 132. 11. **domo,** 'from home,' not = domi, as Class. and L. and Sh. (sub voc. *domus*); cp. § 6, iudicia iam facta domo deferemus: and *Phil.* ii. § 26, consilium peterent foris potius quam domo. *Translate* 'must look for a remedy at home.' 14. Teanum Apulum, so called to distinguish it from Teanum Sidicinum in N. Campania, lay S.E. of Larinum. 17. **solebat**: for *solitus erat*, answering to the Historic present *arcessit.* 20. **ante quam luceret**: the use of the subj. marks that there was a connection of *purpose* or *intention*, not a mere connection of *time*, between the two actions of the principal and dependent verbs. So with *priusquam* and *dum*, as in the famous 'rusticus exspectat dum defluat amnis' (Hor. *Ep.* i. 2. 42). R. 1672, r. 698. 'The next day was not allowed to dawn before he was placed on the funeral pyre.'

28.—22. **quisquam** is not irregular here: it is implied that *no one* of Oppianicus' household brought the news: in fact the sentence is quasi-negative. Cp. Sen. *Ep.* 17. 6, hoc prius quaere quam quicquam. *Catil.* i. § 6, quamdiu quisquam erit qui te defendere audeat, vives—implying a doubt that there will be any one of the kind. *Quisquam* means 'any single one,' 'any whatever,' 'where all are excluded, or the barest minimum is sufficient to justify an affirmative' (R. 2278, r. 898): *quivis* and *quilibet*, 'any one you will' where all are included. The rule that *quisquam* is *only* used in negative and quasi-negative sentences is in the vast majority of cases true: but there are some exceptions, especially in Livy: *e.g.* xxv. 6. 17, nos, quibus, nisi quod commisimus ut quisquam ex Cannensi acie miles Romanus superesset, nihil obici potest: 'we are to blame that any single soldier survived the field of Cannae,'—where the implication is positive and not negative. 26. **cum . . . necatur**: on this use of *cum* with the Indic. following the principal verb, v. R. 1733, r. 735: cp. § 72, unus et alter dies intercesserat cum res parum certa videbatur. [Notice the *present*, equivalent to 'when they proceed to kill the second son.'—H. J. R.] 28. **spe optime confirmato**: v. crit. n. I take *laetanti animo* as the Abl. case, referring to Sassia. Mr. Peterson takes *laetanti* and *confirmato* as Datives in agreement with *Oppianico*: on the ground that a 'better sense is obtained by supposing that it is Oppianicus who rejoices that he has now secured the woman

and her money: nothing has been said of any hopes entertained by Sassia.' But the next sentence evidently contrasts the *spirit* in which Sassia *now* closed with the offer of Oppianicus with the spirit in which (according to § 27, l. 7-10) she had previously spurned it. 'Now in high spirits and strongly re-assured by her prospects.' 30. **quod,** 'whereas,' serves to contrast opposites, especially, according to Classen, where of a certain number the *remainder* are opposed to *one* or *a few* who are excepted. So § 190, ita quod apud ceteros . . . haec mulier . . . putavit. V. crit. n. 'So far from coveting money for the sake of his children, as most men do, he found a pleasure in sacrificing his children for the sake of money.' The antithesis is more verbal than real.

X. 29.—**Page 11,** l. 6, **satisfacere**, as a legal or commercial term, 'to meet one's liabilities by payment or by giving security.' Cp. § 10 n. So of 'the debt of nature': *Phil.* xiv. 31, o fortunata mors, quae naturae debita pro patria est potissimum reddita. Cp. also, for the personification of Nature as a *party* to this transaction, Sall. *Iug.* 14, pater, uti necesse erat, naturae concessit. 9. 'You hear facts which might be treated at the greatest length, treated by me briefly and superficially.' **Strictim** is connected with *stringo* (akin to στραγγεύω, 'strangle'): which has two main senses, 'to draw tight or fast,' 'to graze the surface.' (For the connection of the ideas, cp. in English 'fast,' 'fast by'). *Strictim* accordingly denotes (*a*) 'compactly,' (*b*) 'passing over the surface,' 'cursorily.' Cicero uses many such adverbs in *-im*, expressing the *mode of action*, *e.g.* pedetemptim (§ 118), summatim (§ 19, = per summas loquendo, 'taking the prominent points'), separatim (§ 64), nominatim (§ 185), acervatim (§ 30, = per acervas tractando, 'taking the facts in the gross'). R. 533, 534, r. 227. The symmetrical arrangement of the members of the contrasted wholes, *vos . . . dicuntur*, *illi . . . diceretur*, must be noticed. As *vos auditis* is taken up by *auditis*, so is *illi audiebant* by *audiebant*: and the articulation of the main sentences on either side corresponds. But each of the former clauses has a magnified reflection in each of the latter clauses: thus to 'de eo in quem iudices non estis' answers 'de eo de quo *iurati* sententias ferre debebant.' And thus with 'et (εἶτα, 'after *that*') est quisquam . . .' we can fancy the orator's clenched hand fall on the table before him, as he indignantly demands, 'Will any one *now* declare that the jury which condemned Oppianicus condemned an innocent man?' ending with scornful emphasis upon the word *innocentem*. 11. **consceleratum,** strengthened form of *sceleratum*: cp. decet and condecet, cado and concido, dignus and condignus. 'Guilt-stained.' 12. We cannot press any supposed imperfect sense of **oderant** in order to save the credit of Cicero's advocacy, which may to us seem injudicious in this naïve admission that the jury hated the man on whose guilt or innocence they had to pronounce. Ramsay would do so, explaining, 'they were *gradually becoming filled* with detestation of his reckless villany, and were arriving

at the conclusion that he was omni supplicio dignus.' But what of the Imperfects *debebant*, *intuebantur*, which must be treated in the same way, to the ruin of the sense? [*Oderant* is a pluperfect: 'they had got into the state of dislike and now did actually dislike him.'—H. J. R.] The truth is, as a piece of Roman advocacy the words do not require an apology. Cp. n. on p. 7, l. 15. **omni supplicio**, 'every kind of punishment': cp. *Sest.* § 75, omni mora, *Sest.* § 94, quibus omne supplicium atque omnis iure optimo poena debetur: and in the Plural, *Sest.* § 39, quocum mihi omnes erant amicitiae necessitudines. Thus *omnis* sometimes=*omnigenus*, as πᾶς=παντοῖος. For another use of *omnis*, cp. n. on §. 1. 15. **P. Cannutio**: mentioned in the *Brutus* (§ 205), Sulpici orationes quae feruntur, eas post mortem eius scripsisse P. Cannutius putatur, aequalis meus, homo extra nostrum ordinem meo iudicio disertissimus. **audiebant cum . . . diceretur**: contrast *supr.* l. 8, *auditis cum . . . dicuntur*: a good illustration of the tendency of the Romans to put a past tense after *cum* in the subj., while yet retaining the indic. for the present. The imperf. 'audivi cum diceretur,' 'I heard it said,' is common in Cicero. (R. 1714, r. 726.) [The pres. subj. 'soleo audire cum *dicat*' is found in *Orat.* i. § 129; I know no other instance of the indic. in this form of expression. But I see no objection to *dicuntur* in itself.—H. J. R.]

30.—19. **Acervatim**, cp. n. on *strictim*, § 29. 20. For the position of **huiusce causae**, cp. n. on § 2, l. 15 (*coniunctio*). 21. **teneatis** must not be taken as a Subj. of *simple command*: such a use in the Pres. 2d Person is rare (except when the subject is indefinite), and confined to colloquial Latin. Cp. n. on § 6. It is dependent on *quaeso*: cp. its use in §§ 8, 11, with a Subj. introduced by a final particle, R. 1596, 1606, r. 668, 672. Cp. § 135, tu, Acci, consideres censeo. 28. **emori**, v. crit. n. 'Cried aloud that she was dying in the utmost pain.' 30. **ad**, 'besides': a rare use except in the adverbial *ad hoc*, *e.g.* Sall. *Iug.* xvii. ad hoc malefici generis plurima animalia. **hanc mortem repentinam**: v. n. on p. 34, l. 19. **voces morientis**, 'her dying cries'; and in l. 32 'her dead body.' The Latin compares favourably with the English in the logical precision which assigns the epithet to the person instead of the thing.

XI. **31.**—**Page 12**, l. 2. **parricidium**: the origin of this term was disputed even in ancient times. In Cic. its meaning is: (1) 'the murder of a parent'; (2) 'the murder of a kinsman'; (3) treason against one's country, the common parent, *Sull.* § 6, patriae parricidium. But it is asserted that at the most remote period it also denotes 'murder' pure and simple; in proof of which the following passage is quoted:—*parricidi quaestores* appellabantur, qui solebant creari causa rerum capitalium quaerendarum. Nam parricida non utique is, qui parentem occidisset, dicebatur, sed qualemcumque hominem indemnatum. Ita uisse indicat lex Numae Pompilii regis, his composita verbis: SI QUI

HOMINEM LIBERUM DOLO SCIENS MORTI DUIT, PARICIDAS ESTO (Paul. Diac. after Fest. p. 221 M.). And accordingly we find Priscian, i. § 33, apparently preferring to derive the word from *parem*, *caedo*: whereas the ancients generally derived it from *patrem*, *caedo*. So too modern scholars have (*a*) either connected it with *pater*, or (*b*) taking as original the meaning 'murder with malice aforethought' (*dolo sciens*), have suggested the root παρά, Skt. para, Lat. *perperam*. The latter view (at any rate as regards the *meaning*) is that of Mommsen, *Hist.* i. p. 158 Eng. tr., *Röm. Staatsr.* ii.² p. 528. Rein (*Criminalrecht*, p. 450), objecting to the vowel-change assumed in the derivation from *para*, also considers 'murder of a parent' to be the original meaning. The words of Paul. *l.c.*, may well be explained, 'let every murderer be regarded in the same light and punished by the same law, as if he were an actual parricide.' This would seem to be Ramsay's view; his interesting note should be consulted. 3. 'To pave the way to this abominable crime, he secured his approaches by other guilty deeds.' The metaphor is taken from pioneering or road-making: cp. *leg. agr.* ii. § 17, viam sibi ad beneficium impetrandum munire; not dissimilar is the metaphor in *leg. agr.* i. § 27, honori velificari suo 'to make sail for,' *i.e.* gain an advantage for. The term *munire* ('fortify') of *making* a road, well expresses the compact structure of the Roman road, which was always *military* in its main purpose, and was built to last: v. Rich, *Antiquities*, articles *via*, *agger*. 8. **poculo mortis**: mortis = mortiferum. But the Gen. of quality without an epithet is very rare; and *mors* denoting a 'deadly draught' would be highly poetical. Gruter suspects the word: v. crit. n. [I see no difficulty in referring it to R. 1304 r. 523 b.—H. J. R.] 6. **illud, quod . . . conceptum**, cp. *liberos*, l. 12. 12. **liberos**; the Plural is used to describe, with intentional vagueness, the yet unborn child: cp. use of the neuter in l. 6, and p. 13, l. 2. Cp. Ter. *Andr.* 891, domus, uxor, liberi inuenti inuito patre. So too in Sulpicius' consolatory letter to Cicero on the death of his daughter (*ad Fam.* iv. 5), cogita ea nobis erepta esse, quae hominibus non minus quam *liberi* cara esse debent, patriam, honestatem *cet.* This use of the Plural is not so common in prose as in poetry, which constantly prefers vague suggestion to explicit definition. **hanc lucem**, 'this light of day': ἡλίου τόδ' εἰσορᾶν φάος, Soph. *Phil.* 663. Cp. the expression in Plaut. and Ter., luciscit *hoc* iam. 15. **custodiae**: for the number v. crit. n. 16. Quintil. (viii. 4. 11) quotes this passage to exemplify 'amplification by a comparison'; by which he denotes a kind of *a fortiori* argument. 'In Oppianico non id agitur in illa comparatione, ut ille male fecerit, sed ut peius' (*ib.* 12).

32.—16. **Memoria teneo . . . esse damnatam**, for this construction cp. n. on p. 31, l. 4. 17. Cicero went to Greece and Asia, B.C. 79, according to Plutarch, from fear of Sulla, whom he may have offended by his attack on his freedman Chrysogonus in the *pro Roscio Amerino*:

but most probably to recruit his health and strengthen his voice, on which two years of constant forensic work at Rome had told; as he himself says in the *Brutus*, §§ 314-316. 17. **heredibus secundis**: 'heirs in default,' 'reversionary heirs,' to whom the property went in case the heir, who was first named in the will (primo gradu scriptus), did not, from whatever cause, take the property. A *heres secundus* was in fact a *heres substitutus*: there might also be a heres *substitutus tertio, quarto, gradu*, and so on. Cp. Hor. *Serm.* ii. 5. 48, of a legacy-hunter:

> leniter in spem
> adrepe officiosus, ut et scribare secundus
> heres et, si quis casus puerum egerit Orco,
> in vacuum venias.

19. **damno** is construed most commonly with either the *Gen.* or *Abl.* of the charge *or* the penalty: § 114, damnatos ambitus: § 19, criminibus damnatus. The Gen. of the *penalty* is all but confined, however, to the words *capitis*, *pecuniae*, *capitalis poenae*. R. 1325 and 1200, r. 527, 495. In damnare *octupli* cet. we have the Locative. Here, *rei capitalis* is Gen. of the *charge* or *crime*. Cp. n. on § 97. 20. **heredem familiae**: v. Gloss. *familia*. 22. **in eadem iniuria**, lit. '*in the case of* the same misdeed': *i.e.* 'how much more severely ought the same crime to be punished in O.' (P.) The prep. *in* is often employed with great pregnancy of meaning, which its English equivalent 'in' is quite inadequate to express. Cp. l. 25, *in* singulis hominibus, 'in the person of an individual'; § 51, etiam si *in* minus firmis hominum causis non defuissem, 'in dealing with'; § 115, in tanta multitudine accusatorum; § 119, neque in re nota consumam tempus exemplis, 'where the facts are so familiar'; *Rosc. Am.* § 23, *in* sua re egentissimus, insolens *in* aliena, 'sordid *in expending* his own property, reckless in expending that of another.' So with proper names: § 78, similis in Bulbo suspicio: 'in the case of'; Hor. *C.* iv. 4. 4, expertus fidelem Iuppiter in Ganymede flavo, 'in carrying off G.' In all these instances *in* may be said to give the circumstances or condition. Cp. in . . . iniuriis, § 13, with note. 27. **plures**: v. crit. n.

XII. 33.—31. **adhibitis amicis**: a good illustration of a principle which runs through much Roman law, public as well as private. A magistrate or a *paterfamilias* is legally competent in virtue of his *potestas* to give a certain decision or perform a certain act without the participation of others. But he is held to be *morally* bound, on important occasions, not to act until he has taken the advice of competent persons, who, called in to advise, constitute his *consilium*. Thus for a certain class of actions, the magistrate must advise with the senate as the *publicum consilium*: the jury (*consilium*) in a criminal process stands technically in the same relation to the praetor or quaesitor: similarly in important domestic acts, such as divorce or the capital punishment of a son, relations and friends of the house appear to have been summoned to give their advice. In *leg. agr.*

ii. § 33, complaining of the excessive powers which Rullus proposed in his law to give to agrarian commissioners, Cic. says—orbis terrarum gentiumque omnium datur cognitio *sine consilio*. **Page 13**, l. 1. **tum**: for by the death of Num. Magius the tie of *adfinitas* was, according to Roman law and feeling, dissolved. So *infr*. p. 15, l. 21, *Sest*. § 6, ademit Albino soceri nomen mors filiae (ubi v. Holden). 2. **id quod conceperat**. Cp. n. on *liberos*, § 31. The Indicative in indirect speech is not unfrequent where the clause containing it is merely explanatory or contains a truth for which the writer or speaker *himself*, and not the reported speaker, is responsible: when in fact it is *insulated*. This is frequent in Livy: *e.g.* xxi. 27. 4; duces Galli edocent . . . insulae circumfusum amnem latiore, ubi *dividebatur*, eoque minus alto alveo transitum ostendere. 4. Here **si qui natus erit** (instead of the more regular *esset*) is an extract from the will, left out of construction with regard to the rest of the sentence. The same diction appears in more than one place of the Digest: si quis mihi ex eo nepos sive neptis natus nata erit. **legat grandem pecuniam a filio**: fearing that the woman might procure abortion for herself. 'No *legatum* could be bequeathed except *through* a *Heres*, or as it was technically expressed *ab herede*, who was bound to pay it,' Ramsay, *R. Ant.* p. 263. Cp. the phrase solvere *ab* aliquo, to pay out of funds supplied by some one; *ad Att.* vii. 18. 4, Q. frater laborat ut tibi quod debet ab Egnatio solvat. 5. **secundo herede**, n. on § 32. 7. **faceret**, v. crit. n. for the mood. **liberis**, cp. liberos, § 31. **tutorem**, 'guardian.' V. Ramsay, *R. Ant.* pp. 254, 255. 9. **non longe**, v. crit. n. on this much debated passage. 11. **praesentem solvit**, 'pays down' or 'in advance,' *repraesentat*: cp. the metaphorical expression at the end of *Phil.* ii., si repraesentari morte mea libertas civitatis potest, 'secured immediately.' 12. **si haec solutio . . . est**, an attraction for *hoc*: 'a demonstrative or relative pronoun, used substantively as the subject of a definition, is usually attracted into the gender and number of the defining substantive,' R. 1068, r. 451. Cp. § 96, vis illa fuit; § 171, mortem *quod* illi unum . . . erat perfugium calamitatis; Verg. *A*. vi. 128, sed revocare gradum . . . *hoc* opus *hic* labor est; Soph. *Tr.* 483,

ἥμαρτον, εἴ τι τήνδ' ἁμαρτίαν νέμεις.

14. **tum**, at the time of Oppianicus' trial: so at the end of § 39, tum in Oppianici causa: *et saep.* 15. **victa**, cp. § 14, victrix filiae non libidinis.

35.—18. **obtestatione viri . . . nosse debuit**: the Abl. of *cause* (where it is not a mere variety of the instrumental abl.) generally denotes the *motive*, that is, a cause lying within the subject or agent. It is rarely that it denotes a cause lying outside the agent, except in certain formulas, *causa*, *gratia*, macte *virtute* esto, substantives in *u* which have no other case (iussu, rogatu, etc). Such a case we have in *Phil.* i. 30, se beneficio novo memoriam veteris doloris abiecisse, and in the present passage.

The Abl. in *Catull.* xiv. 3, munere isto | odissem te odio Vatiniano, and the Dat. in Soph. *Ant.* 391:

> *σχολῇ ποθ' ἥξειν δεῦρ' ἂν ἐξηύχουν ἐγὼ*
> *ταῖς σαῖς ἀπειλαῖς*

may be compared. R. 1228, r. 501; n. on § 135. **decem illis mensibus,** 'for the next ten months,' n. on § 22. Ten lunar months, the length of the old year, was the regular period of gestation, as the Romans believed: and for *ten* months too (not *five*) a widow mourned her husband's death. Graevius quotes Ov. *Fasti*, i. 33—

> quod satis est utero matris dum prodeat infans,
> hoc anno statuit temporis esse satis.
> per totidem menses a funere coniugis uxor
> sustinet in vidua tristia signa domo.

19. **quinto mense post,** 'five months after.' R. 1180, r. 491. 22. **coniunctae:** the subject *nuptiae* may be called cognate: this Passive construction answering to *nuptias iungunt* (cp. foedus iungere) in the Active, in which *nuptias* is a cognate Accusative. (Cp. adfinitatis coniunctionem, § 190.)

XIII. 36.—23. 'Of Asuvius *of Larinum*': the difference between the Latin and English idiom is noticeable: so pugna Cannensis, aliena negotia: v. Bradley's *Arnold*, § 58. **Larino,** abl. of origin used attributively; which is not an uncommon idiom in earlier Latin, but rare in Cicero and Caesar. V. Exx. in R. 1264 (r. 512). It is invariably used, however, in giving the name of the tribe: *e.g.* *Phil.* ix. 15, Ser. Sulpicius Q. f. Lemonia Rufus. 25. **perdita nequitia et summa egestate:** apte coniunguntur, nequitiam enim, id est sumtus immoderatos, breui sequitur egestas.—MAN. 26. 'By flattery and obsequious attention he succeeded in worming himself into the confidence of Asuvius; and Oppianicus soon began to hope that he might bring this Avillius into play upon Asuvius, and through him lay successful siege to the young man and carry his ancestral fortunes by storm.' 30. **sperare se . . . expugnare posse:** one of the regular constructions of spero, *posse* with Pres. Inf. being practically a periphrasis for the Fut. Inf. Madv. § 410, obs. 1. 32. **Iniri,** for the voice, v. crit. n. 33. **in solitudine,** relatively to the 'fumum et opes strepitumque Romae.' (Larinum) si cum urbe Roma conferretur, solitudo fuit.—MAN. Page 14, l. 1. **posse arbitrati sunt,** cp. §§ 43, 55, 100. With verba sentiendi et declarandi, when the Subject to the Inf. is the same as that of the principal verb, it is (by a colloquial usage) sometimes omitted. Cp. § 140, posset negare dixisse; § 141, eas ab eo balneas . . . quaerere; § 176, quaesituram esse dixit. Cp. Madv. § 401, R. 1346, 1347. 3. **hos . . . consecutus est,** 'followed closely and overtook.' *Vestigiis* is abl. of the 'road by which'; cp. *Brut.* § 307, Q. Hortensium ipsius vestigiis persecuti. R. 1176, n. 1, r. 490. 10. For **conscio** v. Glossary.

6. **longum est**: we say 'it *would be* tedious.' In phrases such as longum est, fuit satius, aequius erat, utilius fuerat, expressive of *duty* or *power*, Latin prefers to state the absolute existence of the duty or power at a certain time, irrespective of conditions which in fact limited its exercise, using the indicative: English, less logical, conditions it by such fact, and uses the potential. *Sest.* § 12, longum est ea dicere: sed hoc breve dicam. R. 1535, r. 643.

37.—8. **mulierculam**, 'mistress': the Diminutive is contemptuous; cp. γύναιον (Plut. *Themist.* xxvi. § 3); γυναικάρια σεσωρευμένα ἁμαρτίαις (S. Paul's *Ep. ad Tim.* ii. 3. 6). Cp. Graeculus esuriens, plebecula, rumusculi (§ 105); lacrimula (*Planc.* § 76), 'a crocodile-tear.' But sometimes the force of the Diminutive is good-humoured: § 72, aliquid speculae, 'some glimmer of hope': gloriola nostra (*Fam.* v. 12. 9). These divergent applications may be illustrated freely from Cicero's letters: contrast *Tulliola* (Cicero's daughter) with *Pulchellus* (Clodius). In the famous lines of Hadrian to the soul, beginning 'animula vagula blandula,' a pathetic force is given. In *hortuli* (*infr.* l. 15), 'pleasure-grounds' seems to render the effect best; *servulus* (§ 175), 'a favourite slave': in many cases it is more easily felt than expressed. τὸ ὑποκοριστικόν in Diminutives is as characteristic of Cicero as of Catullus. V. Nägelsb. *Stil.* § 46. 11. **obsignatores**, 'qui estamentum obsignant'—according to *Institut. Justin.*, seven Roman citizens of full age. [*Obsignatio* was not a mere sealing, as in modern times in attestation of a deed, but was a *sealing up* of the wax tablets, so as to prevent their being opened and altered improperly.—H. J. R.] 12. **nossent**, consecutive after *qui* (=tales qui). R. 1680, r. 704. 14. **brevi illo tempore**, v. n. on § 22, l. 26. 15. **hortulos**, cp. n. on l. 14. It is plain from *de Off.* iii. § 58 that *horti* and *hortuli* can be used indifferently of the same pleasure-grounds. The singular and plural differ in meaning: the latter, 'a pleasure-ground' (cp. horti Sallustiani, h. Maecenatis, at Rome); the former, 'a kitchen-garden.' 15. **harenarias**, 'excavations made for the purpose of obtaining the volcanic sand now called "pozzuolana." This has been extensively used for building purposes from a very remote epoch, and thus the almost endless maze of the famous Catacombs has been formed' (Ry.), the scene of early Christian worship and burial: cp. Prudentius, περὶ στεφάνων:

> inlitas cruore sancto nunc harenas incolae
> confrequentant obsecrantes voce votis munere.

38.—16. '*Had been* sought in vain' for one or two days: note on p. 3, l. 5. R. 1460, r. 596. 23. **triumvir**—one of the IIIviri capitales, otherwise called popularly IIIviri nocturni, or even IIIviri alone: instituted first about B.C. 289. They form one division of the vigintivirate, which body, together with the quaestors, made up the *magistratus minores* at Rome. These triumvirs acted as adjutants to one or other

of the higher magistrates. (*a*) Thus, as commissioners of police, they assisted the aediles: in this capacity they patrolled and kept order in the streets, arresting and summarily punishing disorderly characters (Hor. *Epod.* iv. 11, sectus flagellis hic triumviralibus): and also superintending all precautions against fire. (*b*) In the other important branch of their functions they are the subordinates of the praetors (with whom, for the earlier period, we must here associate the consuls as judicial officers). (1) In *criminal* jurisdiction they have no independent powers: they may arrest accused persons and detain them till a higher magistrate interferes: they may entertain at their tribunal, the Columna Maenia in the Forum (near the common prison), any accusation preferred, and set an investigation on foot. (This we find Q. Manlius doing in the present case.) They are also (like our Sheriffs) responsible for the execution of a capital sentence: in the case of private execution by strangling, they are themselves the proper executioners: so in the case of the Catilinarian conspirators, Sall. *Cat.* 55. Hence their title *capitales.* (2) In *civil* jurisdiction the triumvirs were competent to try certain cases remitted to them, with instructions, by the praetor acting *in iure* as it was called. But they could not pass a capital sentence: and the quaestiones perpetuae in course of time absorbed their judicial functions.[1] 24. **nullo teste, nullo indice**: cp. § 14, nullis auspicibus, nullis auctoribus. *Nullus* with the abl. is used for 'without,' without the usual *cum* of attendant circumstances. It is in fact an absolute abl. Cp. R. 1242, r. 504. Nixon, *Parallel Extracts*, § 48 γ.

39.—30. **non ullum** for *nullum* merely for the sake of the anaphora. Cp. *Rosc. Am.* § 128, non enim laborat de pecunia, non ullius rationem sui commodi ducit. **honorem**, as in § 118, honoribus quos a p. R. adeptus est, 'office,' as a distinction conferred by the people. Cp. *Planc.* § 60, honorum populi finis est consulatus; Hor. *C.* i. 1, turba Quiritium | certat tergeminis tollere honoribus. 31. **ex**: cp. *Sest.* § 110, ex impuro adulescente et petulante . . . Graeculum se atque otiosum putari voluit—'from being . . .' 'after being . . .' So in Greek, *ἡ χώρα που ἡ τότε ἱκανὴ τρέφειν τοὺς τότε σμικρὰ δὴ ἐξ ἱκανῆς ἔσται*, Plat. *Rep.* 373 D. 32. **scurra**, v. Glossary. **in discordiis civitatis**, referring to the struggles of Sulla with Marius and the Marians, Catulus with Lepidus: from B.C. 88 to B.C. 78. 32. **columnam**, sc. Maeniam, at the south entrance to the Forum, cp. *Sest.* § 124: v. n. on *triumvir*, l. 29. 33. **conviciis** (with **multorum**), abl. attendant circumstance, 'amidst the abuse of numbers': **suffragiis**, abl. instrument. **Page 15**, l. 4. **testibus multis**, probably the obsignatores (l. 11 *supr.*), though they had not given evidence before (l. 24, nullo teste). 5. **adligatum**: here the crit. n. must be consulted.

XIV. 40.—8. **Quid?** modus transeundi ad aliam rem.—MAN. Cp. beginning of Chap. XIII. 9. **cui tu es heres** suggests a motive for the murder. 12. **quo curante omnes suos perdidisset**, perhaps not

[1] Mommsen, *Röm. Staatsrecht*, ii. pp. 580-586.

to be pressed. The account in §§ 21, 22 must be compared: we learn that Dinaea survived her children, M. Aurius, Cn. Magius, and Oppianicus' wife Magia. M. Aurius and a kinsman, A. Aurius, were made away with *after* her death (§§ 23-25): nor is it hinted above that any of the three former perished by foul play. 15. 'An itinerant quack': probably he was a libertus. 15. **adgreditur**, 'makes advances to': a metaphor from war: cp. Sall. *Iug.* xvi., reliquos legatos eadem via aggressus plerosque capit,—of bribery. 16. **transigit** 'bargains.' It is a technical word for a settlement, often a compromise [H. J. R.]. 17. **fora multa restarent**, 'who had many market-towns to finish': the ordinary meaning of *resto*: Pers. iii. 97, iam pridem hunc sepeli: tu restas, and other exx. in Prof. Nettleship's note on Verg. *A.* x. 29. **Fora** is also used of the assize-towns which the praetor visits on circuit in his province: *Verr.* ii. 2. 169, cum praetorem circum omnia fora sectaretur.

41.—21. **fuisset**: Subj. giving the reason. For the tense, cp. n. on p. 13, l. 1: 'had been' as long as Magia lived. 24. **adulterinis**, 'forged': so Sall. *Iug.* xii. clavis adulterinas, 'false keys': and the words of the lex Cornelia de falsis (under which this crime might have been punished), signumve *adulterinum* sculpserit fecerit expresserit.—Paul. *Sent.* v. 25. 1. The word is elsewhere explained—adulterina signa dicuntur alienis anulis facta . . . sculpere facere exprimere (Paul. Diac. p. 28). *Anulus* is the signet-ring, *signum*, its impression. 28. **censorias**, of the censores of Larinum. Originally the census of the whole burgess body of the Roman State was conducted by a central authority, the Roman Censors; before whom each citizen registered himself in person. When this became impossible in practice, the censors employed delegates, who collected the names of Roman citizens serving abroad. Liv. xxix. 37. 5: *lustrum conditum serius, quia per provincias dimiserunt censores, ut civium Romanorum in exercitibus quantus ubique esset referretur numerus.* But with the growth of the municipal system in Italy, decentralisation went forward; and even before the enfranchisement of Italy in B.C. 90-89, which stereotyped it, each municipium had its own censors. The Roman censors determined the time and procedure of the census on each occasion: the municipal censors held it by their mandate. This appears in the *lex Iulia* of B.C. 45, *quae municipia . . . c(ivium) R(omanorum) in Italia sunt erunt, quei in eis . . . maximum mag(istratum) . . . habebit tum cum censor aliusve quis mag(istratus) Romae populi censum aget, is diebus* lx. *proxumeis, quibus sciet Romae censum populi agi, omnium municipum . . . suorum . . . quei c(ives) R(omanei) erunt censum agito . . . eorumque nomina . . . ex formula census, quae Romae ab eo qui tum censum populi acturus erit proposita erit, ab ieis iurateis accipito.*[1] **illum . . . cum illo . . .** nemo **illum . . .** Quintil. ix. 3. 38, quotes this as an instance of what he calls πολύπτωτον

[1] Mommsen, *Röm. Staatsrecht*, ii. pp. 356, 357.

in the arrangement of clauses: the same word being several times repeated, always in a different case or case and gender. He refers also to § 167, *quod* autem tempus . . . per *quem* . . . *unde* . . . *quae* . . . *cur* . . . ? We may observe that with this device we have the simple Anaphora (of *nemo* and *omnes*) here combined: an illustration of the fine elaboration of Cicero's best sentences. **decuriones**, senatus universus.—MAN. The council or senate of a municipium or colony was so called. Thus in B.C. 59, Capua was constituted a colony with *decuriones* and *duumviri* (the latter answering to consuls, cp. § 25, n.). In this municipal council there were generally 100 members, divided into 10 decuries, whose presidents constituted the *decem primi* so called (*Verr.* ii. 2. 162). 29. **rationem . . . rem**; cp. *de Off.* i. § 53, multisque cum multis res rationesque contractae, with Holden's note—'Pecuniary transactions . . . any dealings whatever'—(P.) *res contractae* are 'bargains,' *rationes contractae* 'accounts' as between debtor and creditor.—V. Glossary, *ratio*. 31. **adfinibus**: cp. the case of Cn. Magius, § 34. 32. **aditu**, ad quem adiretur.—MAN. For the whole passage, cp. *infr.* § 170 *ad fin.*: and *Sest.* § 111, te nemo tuorum videre volt, omnes aditum, sermonem, congressum tuum fugiunt: te sororis filius . . . tutorem liberis non instituit. V. crit. n.—The terms of the ban in Soph. *O. T.* 236, are similar—

> τὸν ἄνδρ' ἀπαυδῶ τοῦτον, ὅστις ἐστί, . . .
> μήτ' ἐσδέχεσθαι μήτε προσφωνεῖν τινά κ.τ.λ.

Page 16, l. 1. **abhorrebant**, sc. ab eo: though a verb with the accusative construction would be preferable here, between *aspernabantur* and *fugiebant*. **immanem**: 'monstrous' 'bestial': cp. n. on § 188.

42.—7. **nihil**: 'no one could be more averse . . . than C.' is the English idiom. Cp. *Sest.* § 110, 'est homo iste populo Romano deditus.' *Nihil* vidi magis (sc. deditum), 'devotion could not go further.' The neuter generalises. The idiom is probably colloquial. It occurs in the Letters: e.g. *ad Att.* v. 1, nihil meo fratre lenius, nihil asperius tua sorore mihi visum est: 'my brother was good-nature itself, your sister was as surly as could be.' 8. **ratione vitae**, v. Glossary. 9. **iuste pieque**: cp. *Div. in Caec.* § 61, si *iure* posses eum accusare, tamen cum is [praetor] tibi [quaestori] parentis numero fuisset, id *pie* facere non posses. Thus *iuste* is 'by the letter of the law,' 'without violating statute': *pie*, 'without violating duty.' *Iuste*, propter Opp. insidiantem vitae suae: *pie*, erga se ipsum, est enim pietas a se ipso mortem depellere.—MAN. So Verg. 'fas et iura sinunt.' Tr. 'in a fair cause and with a clear conscience.' 10. **acerbe**, 'before his time.' Verg. *A.* vi. 429, funere mersit acerbo. The metaphor is from unripe fruit. 10. **quoquo modo posset**: contra naturam, contra voluntatem, contra institutam rationem vitae. Cicero here repeats what he said at the close of § 19, vi et necessitate coactum (accusasse).

B.—Plot against Cluentius.

XV. 43.—16. 'There were at Larinum certain persons called Martiales.' For the order of the words cp. n. on § 11. 17. **religionibus** 'religious ordinances': v. n. on p. 61, l. 32. 19. **Venerii**: 'the worship of Venus in her temple on Mount Eryx, on the N.W. coast of Sicily, was kept up by a number of persons of both sexes, who had further to administer the landed property belonging to the foundation, and who seem to have been at least one degree removed above a state of slavery.'—P. 20. **familia**, v. Glossary. 21. **defendere**, 'to maintain,' = defendendi causa dicere: an instance of a verb used pregnantly: so turbare bellum = turbando efficere, excusare = excusando dicere, munire viam = muniendo facere. A separate transitive notion, which governs the object, is included in each of these verbs. V. Nägelsb. *Stil.* § 102. (But Prof. Nettleship doubts the pregnant use: d. hoc = 'I defend this point,' so with acc. and infin. 'maintain this, that . . .') 22. **decuriones**, n. on § 41. 25. **pro loco**, 'considering his position.' 26. If **se** be omitted, cp. n. on § 36, l. 1. **non** for *non solum*. So *Arch.* § 8, qui se non opinari sed scire, non audivisse sed vidisse, non interfuisse sed egisse dicit. **non suis commodis, sed etiam suorum municipum . . . natum**: one of Cicero's favourite commonplaces: cp. *de Fin.* ii. § 45, ut ad Archytam scripsit Plato, non sibi se soli natum meminerit, sed patriae, sed suis. So *de Off.* i. § 22, *Mur.* § 83. It originates in Plat. *Ep.* ix.: *ἕκαστος ἡμῶν οὐχ αὑτῷ μόνον γέγονεν, ἀλλὰ τῆς γενέσεως ἡμῶν τὸ μέν τι ἡ πατρὶς μερίζεται, τό δέ τι οἱ γεννήσαντες, τό δὲ οἱ λοιποὶ φίλοι*: or perhaps in Demosth. *de Cor.* § 205. 28. **tantae voluntati**, cp. tantam opinionem § 4, and *Verr.* ii. 1. 10, tàntae populi Romani voluntati restitisse.

44.—30. **utriusque studio defensionis**; for the double gen. (subjective gen. and objective gen.) cp. *de Off.* i. § 44, C. Caesaris pecuniarum translatio a iustis dominis ad alienos. **defensionis**, cp. defendere, l. 21, for the meaning. 'There were sharp skirmishes every day between Cluent. and Opp., each being eager to hold his own.' 31. **ipse**, vel si non incenderetur ab uxore. 33. **Magni—demovere**: 'they (*i.e.* Opp. and Sassia) thought that their interests absolutely required them to withdraw Cluentius from the case of the Martiales'; quam pro Larinatibus contra Martiales agebat.—Man. **demovere**, by poisoning him (§ 45 *ad fin.*) a sort of euphemism. **interest** and *refert* are generally constructed with adverbs of value (such as *maxime*), but occasionally take the gen. (locative) of value. Verr. ii. 3. 99, magni sua putabant interesse. R. 1188, n. 2, r. 494, 519. **Page 17**, l. 2. **hominis avarissimi**, *ὄντος γε πλεονέκτου, εἴπερ τινος.* Cf. Bradley's *Arnold*, § 224. 1.

45.—3. **Nam**, used as *γάρ narrativum* in Greek, to introduce a promised narrative or exposition. Omit in translating. 5. **animum inducere** when equivalent to *credere* takes acc. and inf.: when it means 'to bring oneself to doing something' (*adducor*), *ut* with subj.: when

equivalent to *statuere*, the simple inf., though the sense is sometimes scarcely distinguishable from that of the last construction. Liv. ii. 18. 11, si, quod inpensae factum in bellum erat, praestare Sabini in animum induxissent. 8. **bona eius omnia ad matrem esse ventura**: the property of an intestate, failing '*sui heredes*' (or children of his own), passed to his *consanguinei*, *i.e.* brothers and sisters by the same father. Sassia, if she married Cluentius pater with *conventio in manum*, would rank (in law) as his daughter, and sister of Cluentius filius. Thus Ramsay explains Cicero's words. But it will be objected: what had become of Cluentia, the sister of Cluentius? and had not Sassia passed out of the *manus* of Cluentius when she married Oppianicus? The word **bona** points to the mother's claims being under the praetor's edict to the *bonorum possessio*, *i.e.* to the practical enjoyment, as opposed to the strict technical heirship (*hereditas*). As Cluentius had no children and no father, the mother would, if he died intestate, be entitled to the *bon. poss.*, if there were no brother or sister. We hear of no brother; the sister must be either dead or had ceased to belong to the Cluentian family by marrying *cum conventione in manum* (Gai. i. §§ 109, 162, 163, etc.). The mother, if she married Cluentius and passed into his *manus*, would have had claim to the *hereditas* and to the *bon. poss.*, as if she had been a daughter; but she had married twice since, and had probably ceased to belong to the Cluentian family. She could thus claim only *bonorum possessio*, not *hereditas* (succession by civil law). Cp. § 165, where the language is more explicit. [For this explanation I am indebted to Mr. Roby.] 9. **aucta**, as Class. says, is Nom. case, answering to *orbata*. So *Verr.* ii. 5. 80, hac tanta praeda auctus. 10. **necaretur**; the Subj. may be somewhat difficult. (*a*) A good parallel is *de Or.* i. § 167, alter plus lege agendo petebat, quam quantum lex in xii tabulis permiserat, quod cum impetrasset, causa *caderet*: 'having obtained which, he *would*, or *was to*, be cast on the technical point.' So here, 'so (he thought) she *might be*, or *would be*, more easily killed,' or 'intending to kill her more easily.' 'The imperfects express the future force of the subj. in past time.'—H. N. (*b*) We may however call the subj. simply hypothetical, *i.e.* apodosis with protasis **aucta pecunia, orbata filio**: 'who would, if made richer, have furnished better reward for her death, and if deprived of her son, have been killed with less risk': R. § 1534, r. 642. One might have expected, instead of quae . . . necaretur, quam necari posse, so that this would have been dependent on *intellegebat*. But Cic. has chosen to put it independently [H. J. R.]. This Imperf. Subj. in past time answers to the Pres. Subj. in present time—giving an assumption *possible* at the time of its making, but falling in the province of things past: the case is regarded as simply imaginary (not as unfulfilled).—An ex. in R. 1532 c. (the seventh) brings this out well: *Tusc.* i. § 90, Cur igitur et Camillus *doleret*, si haec . . . eventura *putaret*, et ego *doleam*, si . . . gentem aliquam urbe nostra potituram *putem*? The forms

of imaginary supposition for present and past time are there side by side. Cp. p. 23, l. 18, with n.: also § 113, *putabitur* crit. n. Contrast imperf. subj. of continuous action *unfulfilled*, § 63, n., § 80, n.

XVI. 46.—13. Cp. beginning of ch. xv. 14. 'Aletrium, written also Alatrium, as in Greek Ἀλέτριον and Ἀλάτριον, was in the country of the Hernici, a few miles to the north of the Via Latina, about ten miles due east of Anagnia and six miles north of Ferentinum. The modern town Alatri is chiefly interesting from the circumstance that the walls which encompassed the ancient city and its citadel still remain almost entire, presenting perhaps the finest and most perfect example in existence of that very ancient and massive style of building which is now generally termed Polygonal. Arpinum, the birthplace of Cicero, where also there is a fine Polygonal wall, lies about sixteen miles south-east from Aletrium, and the proximity of the two towns is alluded to in the next chapter (xvii. § 49), "quod mihi cum Alatrinatibus vicinitatem . . . esse sciebat."'—Ry. 16. **splendor**: cp. § 198, of the Larinates, honesti homines et summo splendore praediti: *Phil.* iii. 15, Aricium . . . splendore municipum honestissimum. Properly 'spotlessness.' V. Glossary. 18. So *Verr.* ii. 4. 23, ut opinio mea fert, 'according to my opinion': *infr.* § 168, ut aetas illa fert, 'as is usual at that time of life': *leg. agr.* ii. § 77, si ita commodum vestrum fert. *Ferre* thus absolutely used signifies 'to tend,' 'incline,' or 'bring it about.' Cp. Verg. *A.* ii. 34, Troiae sic fata ferebant. V. Glossary. 19. For position of **familiarissime** cp. *graviter*, § 16; on **iam**, v. crit. n. 20. **coniungendas amicitias**, v. n. on § 35. **studiorum ac naturae**, 'tastes and disposition.' 23. **circumscriptio** was the technical term for fraud upon a minor, which was forbidden by the lex Plaetoria (B.C. 192) under penalty of *infamia*: *de Off.* iii. § 61, circumscriptio adulescentium lege Plaetoria (erat vindicata). Juv. *Sat.* x. 222, quot circumscripserit Hirrus pupillos.

47.—26. **sic** anticipating dependent Inf.: cp. n. on § 8. Cp. *Verr.* ii. 2. 9, *hoc statuerunt* . . . istius iniurias per vos *ulcisci*. *Sest.* § 24, statuebam sic, boni nihil . . . exspectandum. So in Greek οὕτως, Plat. *Symp.* 215 a, Σωκράτη δ' ἐγὼ ἐπαινεῖν οὕτως ἐπιχειρήσω, δι' εἰκόνων. 29. **Cleophanto**: Graeco, nam Romanis medicina in artium liberalium numero non erat.—MAN. The Greeks were among the best physicians in the world even in Herodotus' day, who tells us that, among them, those of Kroton in Magna Graecia were the most famous. Cp. the story of Demokedes of Kroton, who practised at the court of Susa at the end of the sixth century B.C., and cured Darius of a sprain which the Egyptian doctors could not relieve. There were State physicians then in many Hellenic cities. 31. **spe** objective here, 'promises': cp. Sall. *Iug.* xiii., pars spe alii praemio inducti. Similarly *metus* often = 'threats': the two are opposed in § 176, animis servorum et spe et metu temptati. 31. **et**, 'but': v. crit. n. 32. **frugi**, an indeclinable adj. (which is even used as an *agnomen* of one of the Pisones); originally a predicative dative from

frux, meaning therefore 'for profit,' 'profitable': and so 'thrifty.' Hor. *Sat.* I. iii. 49, parcius hic vivit: frugi dicatur. Hence 'virtuous.' (Proprie de servo dicitur, qui rem domini diligenter custodiat; sed ad probitatem saepe transfertur.—MAN.) To the old Roman thrift was a large part of virtue. We may cp. the slave Onesimus and S. Paul's words about him, *Ep. ad Philem.* 10, 11. Page 18, l. 2. The absolute use of **communicavit** is rare: 'took B. into his confidence,' 'communicated the facts *to*, shared them with, B.' not (as P.) 'put himself in communication *with*.' Cp. *Phil.* vi. § 23, me, quicum profecto . . . pro summa familiaritate nostra communicasses. **qui qua fide fuerit meminisse vos arbitror.** So *Phil.* ii. § 40, vide quam te amarit is *qui* albus aterne fuerit ignoras: on which there is a note (*Mnemos. N. S.* 7. 116 ff.) 'soloeca oratio est et omnino requiritur *quem*.' No doubt the anticipation in the main sentence of the subject of the dependent clause is the commoner idiom: but it is not universal. 25. **comprehenderetur res**, 'the suspicion might be clenched.' 26. Consult crit. n. for the other reading of this passage; and the reconciliation of the statement here with that in §§ 49, 53. 8. **dabatur**, the action of the imperf. is incomplete: 'was being handed over' 'was on the point of being paid.' Cp. ἐδίδουν in Greek, v. Goodwin, *Moods and Tenses*, § 11, n. 2. For the circumstances here related Prof. Nettleship compares *Cael.* § 62, *q.v.*

XVII. 48.—12. **apertior**, 'more evidently guilty' (Ry.). The epithet is transferred from the offence to the offender: cp. *manifestus*, 'red-handed.' 14. **a quoquam**, 'by any one (even such an orator as myself)': he is preparing the jury for his own failure to explain away the charge, §§ 51, 52. There is a very similar allusion to his rival Hortensius in *Verr.* i. § 10, quod est ingenium tantum, quae tanta facultas dicendi et copia quae istius vitam . . . iam pridem . . damnatam . . possit defendere? 16. **aut . . . aut . . .**: two alternatives of equal value and mutually exclusive. Cp. § 64, aut ab Habito aut ab Oppianico. Contrast the use in § 6. R. 2220 (a), r. 873.

49.—20. **ita . . . ut . . .**, 'under such circumstances, with this limitation, that . . .': a common idiomatic use: cp. § 3, *sic* audire consuestis *ut* . . . quaeratis. § 88, § 112. The *ita* conditions the application of the statement. It must be translated in each case according to the context. Here 'in appearing at the bar of the court, he took his place there as a condemned man.' Cp. *Phil.* ii. § 85, ita eras Lupercus ut te consulem esse meminisse deberes, 'you were Lupercus: but you were bound to remember that you were consul': v. Mayor's excellent note. R. 1704, r. 714 c. 20. **citatum**, 'summoned'; by the *praeco* on behalf of the Praetor or Iudex quaestionis: cp. Ry. *Rom. Ant.* p. 295. Momms. *R. Staatsr.* i. p. 349, 19-21. 'Once and again': by the condemnation first of Scamander then of Fabricius. Cp. *Phil.* xiv. 22, semel et saepius, 'not once but several times.' 22. **nomen detulit**; this, the formal indictment by the accuser, preceded the *citatio*. The single acts in an ordinary process were: *postu-*

latio, the accuser's application for leave to impeach : *nominis delatio : nominis receptio*, by the praetor who enters the name of the accused upon his list of cases. (Ry. *Rom. Ant.* l.c.) 24. **consilium**, 'the jury.' Originally a body of advisers whom the praetor or quaesitor was constitutionally, though not statutably, bound to summon to assist him in judging. Cp. n. on § 33, l. 31. The name is retained for the *iudices* who sat on a *quaestio perpetua.* V. Ry. *Rom. Ant.* pp. 289, 291. For **integrum** v. Glossary. Cp. *Sest.* § 106, contiones . . . ad quas nemo adibat incorruptus, nemo integer. 25. **simplex causa** ad rationem actionis, quae in iudicio adhibetur, **unum crimen** ad res spectat, de quibus agitur, ita ut simplex causa esse possit, etiam ubi plura crimina deferantur . . . contra in uno crimine non raro impedita causa versetur (Class.). 'A straightforward process, an established fact, a single charge were before the court.' 28. **mihi . . . vicinitatem**, n. on § 46, l. 14. 32. **dignitatis**, a gen. of possession. Bradley's *Arn.* § 291. 33. **idque . . . ut**: for this use of the demonstrative with an epexegetic clause cp. *de Or.* iii. § 173; idque primus Isocrates instituisse fertur, ut inconditam antiquorum dicendi consuetudinem numeris adstringeret : and an example of the relative thus used, *de Natura Deorum*, i. § 38, quoted in n. on § 8. **causam . . . susciperem**, cp. n. on § 68, causam . . . recepisset. **Page 19,** l. 1. **causam, in qua causa.** This repetition of the antecedent in the relative clause recurs in §§ 62, 90, 148, 156, 184. Ellendt (on *de Or.* i. § 174) enumerates more than fifty references for this usage in Cic., excluding cases where *res* is repeated. As he says, it began in legal and juridical formulae in which precision is everything : he compares the redundant language of English Acts of Parliament. It is most frequent with terms of likely occurrence in law documents, *causa*, *lex*, *dies*, *iudicium*, *locus*, cet. But it certainly is not confined to legal phraseology. Caesar, writing, as he does, with military preciseness, is partial to it: *e.g. B. G.* vi. 35, diesque appetebat septimus quem ad diem. Cicero adopts it whenever it pleases him to be accurate or formal, even in letters ; *ad Fam.* vii. 1. 2, apparatus spectatio tollebat omnem hilaritatem, quo quidem apparatu non dubito quin animo aequissimo carueris : *leg. agr.* i. § 21, eum nos agrum P. Rullo concessisse, qui ager . . . Gracchorum largitioni restitisset : *Div. in Caec.* § 18, ea tota (spes) in hac lege posita est, cuius legis . . . *Sull.* § 43, dico locum in orbe terrarum esse nullum, quo in loco . . . In such an example as the first cited, it is a mere trick of style. Cp. Holden on *Sest.* § 11. Also n. on § 89, quo tempore . . . eo tempore. **patroni**, Fabrici.

XVIII. 50.—9. **ille quidem**: some omit *quidem* here (but cp. crit. n.). It is best explained as pointing an antithesis between *accusabat Scamandrum* and *omnia tela accusationis in Opp. coniciebantur*, which would be clearer if introduced by *sed.* 'When the particle *quidem* stands with a concessive signification (*indeed*, *certainly*) with a predicate (verb or adj.), with *sed* following, it is in the best writers not connected imme-

diately with the verb or adj., but a pronoun is inserted before *quidem*, which corresponds to the word of which the predicate is conceded : P. Scipio non multum ille quidem nec saepe dicebat, sed omnes sale facetiisque superabat. *Brut.* § 34. (Madv. § 489 b.) R. 2259, 2261, r. 890. 10. 'But it was upon Opp. that the whole artillery of the prosecution was turned.' 12. **causa**, 'motive': v. § 45, intellegebat Habito . . . necaretur. **familiaritas**, cp. § 46, his . . . familiarissime. V. Glossary. 13. **omnis**=tota, cp. n. on § 1, l. 1, and the words *totius accusationis* three lines above. 'The whole indictment, after a diversified and telling exposition, was consummated by the story of the overt discovery of the poison.' Contrast this use of *ad extremum* ('to crown all') with that in § 6.

51.—16. **cura**, 'uneasiness.' 36. **metu**, 'nervousness.' The commentators refer to *Div. in Caec.* § 41, ita mihi deos velim propitios, ut, cum illius temporis mihi venit in mentem quo die citato reo mihi dicendum sit, non solum commoveor animo, sed etiam toto corpore perhorresco : *de Or.* i. § 120, ut enim quisque optime dicit, ita maxime dicendi difficultatem variosque eventus orationis exspectationemque hominum pertimescit. So *Deiot.* § 1, cum in omnibus causis gravioribus . . initio dicendi commoveri soleam vehementius. 18. **iudicium . . ingenii**; for the gen. cp. n. on § 1: it answers to the prepositional phrase with the corresponding verb: '*de meo ingenio* iudicatur.' Cp. *Pis.* § 10, quominus de moribus nostris . . . iudicaretur. 20. **possim**: sc. facere. In § 154, quoniam id non posset, there is an ellipse of fieri. **ne . . . videar** gives the substance of his fears, depending on the idea of *metus* in the principal sentence. 'I fear to be thought so shameless as to profess what I cannot perform, or else so disloyal or so indifferent as to fail to perform what I can.' 23. **infantissimus**, 'tongue-tied.' So *ad Q. Fr.* iii. 4. 1, nihil accusatore Lentulo subscriptoribusque eius infantius. Lucr. v. 1030, videtur | protrahere ad gestum ('gesticulation') pueros infantia linguae.

XIX.—25. **collegi me**, 'mustered my powers, 'commanded my emotion': exactly equivalent to the colloquial 'pulled myself together.' So Sen. *Ep.* i. 11. 1, *Div. in Caec.* § 37, tu te collige: cp. *Tusc.* iv. 78, quid est autem se ipsum colligere, nisi dissipatas animi partes rursus in suum locum cogere (quoted by Heitl. and Cowie). **ita**, explained by the infinitives following : so *sic*, § 47. 26. 'It was generally reckoned creditable for young pleaders, such as I then was, not to refuse to stand by a man on trial even though his case might be rather weak.'—P. For *illi aetati* (abstract for concrete), cp. § 13, animum adulescentis . . . pellexit eis omnibus rebus, quibus illa aetas capi potest. The trial of Scamander must have taken place very shortly before that of Oppianicus. The latter took place eight years before the present trial (§ 82), *i.e.* in B.C. 74, when Cicero was thirty-two years old : and the trial of Scamander was doubtless in the same year, as Cicero was quaestor in Sicily in the year preceding. **laudi dari**; the opposite is *vitio dari*: a predica-

tive dative in either case. R. ii. p. xlvii, r. 482 b. **etiam si . . . defuissem**; the transition from the general to the particular need not be a difficulty. We might have expected *si etiam* in m. f. cet. In Greek it is the rule rather than the exception. 27. **in**: cp. notes on §§ 13, 32. 28. **Itaque**, 'and thus,' answering to *ita constitui*, l. 25. 'I battled, I pressed everything into the struggle, I resorted, so far as in me lay, to every nostrum and loophole for a desperate case, with this result, though I will say it with diffidence, that it was impossible for any to suppose that the advocate had not done justice to his case.' 30. **dicam**, future indicative, which is commonly used in such parentheses: § 193, paene dicam; *de Or.* i. § 98, vere loquar; yet *Planc.* § 24, timide dico, sed tamen dicendum est. In the latter passage the qualification contained in the words is the same as it is here: the orator fears that his self-praises may offend his hearers. [Mr. Roby takes *dicam* as pres. subj., under R. 1540, r. 644 b, or R. 1590, r. 666 a.] So Classen's note is wrong: haec non modestiae causa Cicero adiecit, sed quod in tam turpi causa vix honestum videbatur tantum a se esse praestitum. Cp. end of § 109.

52.—32. **ut quicquid** for *ut quicque*, an archaic use which may have held its ground in popular speech. It occurs in Lucr., *e.g.* i. 289, ruit qua quicquid fluctibus obstat; again in Cic. *ad Fam.* vi. 1. 1, quocunque in loco quisquis est, idem est ei sensus . . . ex interitu rerum et publicarum et suarum. Properly *quisquis* is only an indefinite relative. R. 2283, r. 899. V. crit. n. **apprehenderam**: the perfect and pluperfect indicative are used in primary and historic time respectively to denote a 'case frequently recurring,' with quicunque, cum, ut quisque, cet. This *iterative* use of these indicative tenses is universal in Cicero, Caesar, and Sallust; Livy and later writers have the subjunctive in pluperfect and sometimes imperfect tenses. *Verr.* i. § 19, ut quisque me viderat, narrabat. Contrast Liv. i. 32. 13, id ubi dixisset, hastam in fines eorum emittebat. The imperfect of repeated action naturally follows this pluperfect. R. 1716, 1717, r. 720, 721; Bradley's *Arn.* § 434. 'As fast as I laid hold of any point, the prosecutor wrenched it from my hands.' (Observe the art with which Cic. turns an awkward fact against his own case, viz. his own defence of Scamander, into an additional argument against Oppianicus.) 33. **quaesiveram**, iterative again: and **egeram**, p. 20, l. 3. But **usus essem**, l. 7, **commoratus essem**, l. 10, are single facts. Page 20, l. 6. **ventura fuisse**, v. crit. n. for the general sense. This periphrastic infinitive represents *venissent* in Oratio Recta, the apodosis to an unfulfilled condition contained in *morte Habiti* (= si mortuus esset Habitus). R. 1784 a, r. 765 a.

53.—13. **usu venire**, 'occur.' *Venio* is seldom, if ever, used absolutely with a neuter subject in Cicero, except in this phrase: the only instance in Merguet (if it is an instance) is *Marcell.* § 27, quod [extremum, *i.e. finis vitae*] cum venit, omnis voluptas praeterita pro nihilo est. *Usu* cannot be a dative, as Ry. suggests: it is an abl. modi *without an*

epithet; 'usu venire (lit. come in practice), happen, turn out,' R. 1238, n. 3, r. 503. 2, where other instances will be found. 15. **hoc loco**, 'in this part of his argument.' **testibus**: the simple ablative is used because the *persons* denoted are regarded not as *agents* but as *instruments*. In such a case *per* with the accusative is commoner. Cp. *ad Q. Fr.* iii. 3, (Gabinius) maxime testibus caeditur, and note on l. 20. R. 1213, 1220, r. 499. 'The case broke down under the evidence of most respectable witnesses.' 19. **summa religione et summa auctoritate praeditus**, 'a scrupulously truthful man whose word carried the greatest weight.' 20. **Habito**, dative; so *facere alicui*, a dativus commodi or incommodi, as the case may be. Hor. *Serm.* i. 1. 63, quid facias illi? It is also used with the personal abl. instrumenti, (*Sest.* § 29, quid hoc homine facias?) in the sense of 'putting a person to a certain use.' So § 186, quid istis hominibus factum est, Stratone et Nicostrato? Cp. Professor Palmer's note on Hor. *l.c.*

54.—23. **re quidem vera**: '*but* in reality.' This *adversative* use of *quidem* is often forgotten. It is more commonly concessive (cp. § 50), and occurs in the former member of an antithesis. We may compare the adversative use of μήν (a strengthened μέν) in Greek. Cp. *Sest.* § 15, intentus est arcus in me unum, sicut volgo loquebantur, *re quidem* in rempublicam: and § 132 n. 24. **tota accusatione**, v. crit. n. 'Throughout the prosecution.' For the simple ablative of place with *totus* or *medius* as attribute, v. R. 1170, r. 486. 25. 'And he made no secret of it.' Cp. Liv. xxii. 14. 15, haud dubie ferebant Minucium Fabio ducem praelaturos. In this phrase *ferre* means to 'bring out,' 'show': sometimes 'to do so in words,' 'declare'; v. Glossary. 25. **frequens**, 'constantly.' *Pis.* § 80, cum P. Lentulo consuli frequens adsideret. [Or, with a glance at the phrase *frequens miles*, 'he was there in his place punctually,' 'on all occasions'?—H. N.] **advocabat**, 'beat up his supporters.' An *advocatus* was not necessarily a *legal adviser*: it denoted generally 'any friend who lent his aid, countenance, or advice,' attending in court during the trial. Cp. Pseudo-Asconius on Cic. *Div. in Caec.* § 20, qui defendit alterum in iudicio aut patronus dicitur, si orator est, aut advocatus *si aut ius suggerit aut praesentiam suam commodat amico.* So in Hor. *Serm.* i. 9. 38 (the Bore), 'Si me amas,' inquit, 'paulum hic ades,' 'inteream si aut valeo stare aut novi civilia iura,' *i.e.* 'I cannot simply *appear* (stare = *adesse*), much less give professional advice.' Mr. Peterson quotes Cic. *Phil.* i. 16, vellem adesset Antonius, modo sine advocatis; Dem. *de Cor.* 275. 20, οἱ ἐκ παρακλήσεως συγκαθήμενοι. *Advocatio* denotes 'not only the *act of calling* upon friends for assistance in judicial matters, but also the *time allowed* to a defendant to prepare for his trial: advocationes postulare (*ad Fam.* vii. 11), "to demand postponements."'—Ry. There is a third sense: 'the body of supporters thus called in'; advocatio togatorum, *Caec.* § 43. [Other reff. in Holden, *de Off.* i. § 31.] It is important to remember that *advocatus* 'was never employed to denote a *pleader*

[*patronus*] until the imperial times.'—Ry. *Rom. Ant.* p. 312. 27. **hoc ipso in loco**, he sat in the 'subsellia reorum' (cp. crit. n. on § 65, l. 16), the part of the court where the accused and his supporters sat : in hisce subselliis, *Rosc. Am.* § 59. It is hard to see how this fact by itself should have damaged the case : Opp. as an *advocatus* could not sit anywhere else. Perhaps Cicero treats an ordinary and necessary occurrence as an omen of Oppianicus' fate. **hoc loco**, 'ex quibus Cicero Cluentii causam agebat.'—MAN. 29. **coniciebantur**, 'were turned upon.' *Verr.* ii. 5. 175, omnium oculi coniecti sunt hoc ipso tempore in unum quemque nostrum. Also *leg. agr.* ii. § 25, cum ad omnia vestra pauci homines cupiditatis oculos adiecissent, 'had set longing eyes on.'

XX. § 55.—32. 'When the time came for the consultation of the jury.' The speeches for the prosecution and for the defence having been heard, and the evidence given, the jury were called upon by the judge to give their verdict : he is said *mittere iudices in consilium*, they *ire in consilium* (v. § 83). So § 74, in consilium erant ituri iudices xxxii. ; § 75, consurgitur in consilium ; which latter passage seems to imply that they retired from court to consider their verdict. Cp. the expression in *Verr.* i. § 39, inventi sunt senatores qui . . . *exirent* in eum reum quem incognita causa condemnarent. V. Ry. *Rom. Ant.* p. 298. 33. **quaesitor**, general term for the presiding judge in a *quaestio perpetua* whether he was a praetor or *iudex quaestionis* (supplementary judge for criminal trials). Ry. *Rom. Ant.* pp. 291, 292. V. note on § 89. **lege Cornelia.** The *lex Cassia tabellaria* (B.C. 137), introduced voting by ballot (per *tabellas*) (vocis suffragium, *legg.* iii. §§ 35, 36) : it would seem to have been superseded for a short period by a law of Sulla (here referred to) which gave the defendant the right of choosing whether the jury should vote openly or secretly. Ry. *Rom. Ant.* p. 298. Compare § 75, consurgitur in consilium, cum sententias Opp., quae tum erat potestas, palam ferri velle dixisset. **tum** : by the time of this speech the law had been repealed. **Page 21**, l. 3. **Velle** : for omission of subject, cp. n. on p. 14, l. 1. 5. **prima actione**, cp. § 76, *primo* condemnare, and § 103. In ordinary cases the verdict might be given in three ways : *absolvo* (A on the tabella), Not Guilty ; *condemno* (C), Guilty ; *non liquet* (N. L.), Not Proven,—this denoting that the juror could not make up his mind. In cases of doubt and difficulty the majority might vote N. L. : upon this the presiding judge said 'Amplius,' and fixed a day for a second hearing (secunda actio), the *first hearing* (*prima actio*) having failed to educe the truth. The same process was repeated, with fresh pleading and fresh evidence : and if the jury were still undecided, a fresh adjournment (*ampliatio*) might be made. The process was repeated until a positive verdict was obtained. Ry. *Rom. Ant.* pp. 299, 300 should be consulted, also his note on this passage. 10. **sua sponte** : non alieno consilio.—MAN.

56.—12. **Atque . . . tamen,** adversative : but *atque* alone could scarcely

convey this force, though in § 25, atque haec parva sunt, § 28, atque hunc tantum, § 75, atque illi omnes . . ., it may seem to do so. It merely introduces something fresh or unexpected in continuation, perhaps with some emphasis; like *καὶ μήν*. So we have atque, ut intellegatis . . . (§§ 11, 20), atque ut hoc ita esse perspicere possitis . . . (§ 43), appending a fresh argument. Taking the classification of § 20 n. we might call it *augmentative* in the present passage. 'Now that Opp. stood morally condemned at the bar of public opinion, though as yet not formally condemned by the verdict of a court.' 13. **pronuntiatio** is the formal announcement of the verdict (FECISSE VIDERI, if 'Guilty'—*Verr.* ii. 5. 14), by the *presiding judge*. Cp. the case in *Verr.* ii. 2. 93, iste pronuntiat 'Sthenium litteras publicas corrupisse videri.' In § 73 *infra* we have 'placuit repente pronuntiari DIXERUNT': this *pronuntiatio* was made by the *praeco*, who also summoned the parties (citavit) and dismissed the jury at the end with the word *ilicet.*—Momms. *R. Staatsr.* i^2. p. 349. **re**, the fact upon which the verdict of society (*existimatio*) was based, viz., the condemnation of his instrument Scamander: **lege** the law upon which the verdict of the court (*pronuntiatio*) would be based, viz., the lex Cornelia de Sicariis et Veneficis. There is therefore no hendiadys here. 16. 'Considered the abettors and accomplices of such crimes worthy of punishment.' The plural of the abstract noun here is used in keeping with the generic plurals *eos*, *facinorum*. We find plurals of abstract nouns sometimes thus used with reference to *more* agents or objects *than one*. Thus *Nat. Deor.* 2. 6, deorum cultus religionumque sanctitates; § 101, volatus alitum. The sanctity, flight, and here complicity, are *divided:* they appear in a plurality of instances. Cp. n. on offensiones, § 139. On *conscientia*, *conscius*, v. Glossary. 20. **uti ei locus primus constitueretur impetravit**, sc. a iudicibus (cp. § 59, and also § 94, where v. n.). 'Obtained his request that the case of Opp. should be placed first on the list for trial.' The *iudices* could take the cases before them in what order they thought best. 23. **laudatoribus**, witnesses to character (§§ 110, 196, 197). They might come forward as private persons, or as delegates of a town: *e.g.* the decuriones of Larinum sent a deputation of this kind to testify to Cluentius' character. *Ten* was the minimum: in iudiciis qui x laudatores dare non potest, honestius est ei nullum dare quam illum quasi legitimum numerum consuetudinis non explere, *Verr.* ii. 5. 57. Ry. *Rom. Ant.* p. 297.

57.—24. **Rem integram**, v. Glossary. **quamvis suspiciosam**, 'however unsatisfactory.' Properly 'to whatever extent you please': so in a finite sentence *quamvis* may qualify the adj. only, sometimes itself being inflected, as quam volent . . . faceti . . . sint, alia fori vis est, alia triclinii, *Cael.* § 67—the subj. being concessive in its own right—'they may be as witty as they like, yet the power shown in the forum and that shown at the dinner-table are very different things.' R. 1627 end, 2281,

r. 676 b. 26. **inopia et necessitate**, 'defenceless and helpless condition'; inopia = inopia amicorum (*Div. in Caec.* § 50). Cp. Quinct. § 84, in haec causa improbitatem et *gratiam* cum *inopia* et veritate contendere. 27. **Caepasios**: *Brutus*, § 242, eodem tempore C. L. Caepasii fratres fuerunt, qui multa opera, ignoti homines et repentini, quaestores celeriter facti sunt, oppidano quodam et incondito genere dicendi. 30. Cp. § 127, in culpa sunt ac suspicione ponendi. (V. Glossary, *pono.*) *In*, 'in the way of': so Verg. *A.* viii. 273, tantarum *in munere* laudum.

XXI.—31. **iam**: crit. n. on § 46. 32. **ut quisque** with the superlative taken up by **ita** with the superlative expresses a proportion, which might have been stated thus—*quo* difficilior . . . *eo* nobilior . . . Cp. § 202, ut quisque crudelissime oppugnatur, eum lenissime sublevatis: and reference there. **Page 22**, l. 2. **nisi forte** . . . on the force of the whole sentence, and the combination *nisi forte*, v. crit. n. R. 1569, r. 653—§ 109, erat enim . . . defendi, may be compared with the sentiment here expressed.

58.—4. We may observe the transition from the periodic to the detached style—the latter, as frequently, being characterised by much asyndeton. This often occurs where a narrative is to be given. The events, instead of being grouped by subordination of clauses, are co-ordinated, their connection and relative importance being indicated, in the main, simply by the order of their recital. Thus the verbs fall singly like the strokes of a hammer:[1] the general impression left upon the mind is that of a drama very rapidly enacted, or proceeding by steady movement to a catastrophe; or it is that of a story accurately exhibited in its details, to conciliate acceptance. [The same style appears in argument and refutation: *e.g.* in the '*altercationes*'; cp. §§ 61, 63, 90, 91. So in *Sull.* §§ 53-55.] With the present narration we may cp. *Rosc. Am.* §§ 59, 60, a description of a scene in court; *Cat.* iii. §§ 10, 11. The student should read Dr. Potts' *Hints*, Part iv. Ch. vii., 'On the Limitations to the Employment of the Period': where Cic. *Orat.* § 225 is quoted: 'incisim autem et membratim tractata oratio in veris causis plurimum valet, maximeque eis locis, cum aut arguas aut repellas, ut nostra in Corneliana secunda "o callidos homines, o rem excogitatam, o ingenia metuenda!"' 5. 'Treating it as a case prejudged'; this explains *paucis*. **alte petito**, 'far-fetched.' Cp. § 66, repetam paullo altius; § 11, paullo longius exordium . . . petam. *Alte* = 'going far back,' 'starting high up': so *de leg.* i. § 18, *alte* et *a capite* repetis quod quaerimus; Verg. *A.* viii. 395, quid causas petis ex alto? 11. **etiam ipse**: cp. crit. n. on § 141, *ipse*, where all but S T read *et ipse*. Livy often uses *et ipse* meaning 'on his part,' or 'as well,' in cases where it is implied that the predicate or attribute of the subject expressed is common thereto with a subject unexpressed save in the context: *e.g.* xxi. 17. 7, Cornelio minus

[1] Cic. *Orat.* § 226: nec ullum genus est dicendi aut melius aut fortius quam binis aut ternis ferire verbis, nonnunquam singulis.

copiarum datum, quia L. Manlius praetor *et ipse* cum haud invalido praesidio in Galliam mittebatur, 'Manlius was being sent *as well* (as Cornelius)'; i. preface § 3, iuvabit tamen rerum gestarum memoriae principis terrarum populi pro virili parte *et ipsum* consuluisse, 'I shall be glad to have done *my* part (as well as others) for Roman history.' In each case the words in question are equivalent to a very strong *etiam.—Et ipse* (according to Merguet) only occurs once in Cic., *Rosc. Am.* § 48, qui et ipsi incensi sunt studio, and the best interpreters now disconnect *et* from *ipse* in that passage. *Ipse quoque* is generally used in its place: *Sex Rosc.* § 33, hominem . . . nisi inter eos, qui *ipsi quoque* insaniunt, insanissimum. Here we have *etiam ipse*, 'he proceeded gratuitously to inflict fresh gashes upon a case that was maimed and wounded at the outset': *etiam ipse* = 'on his part too,' 'as well as the accusers.' Cp. *Planc.* § 85, uter nostrum est cupidior ioci? egone, qui quod dici potuit non dixerim, an tu qui *etiam ipse* in te dixeris? 'which of us is fonder of a joke? I, for having missed an opportunity, or you for having gratuitously made one on yourself?' **ut**: v. crit. n. for an important variant. 12. **sedulo faciebat**: v. crit. n. and Glossary. 13. **praevaricari accusationi**, 'to be in collusion with the prosecution.' V. crit. n. here: this dative construction is without a parallel: it may be justified as a dat. commodi, but we should rather expect *accusatori*. Strictly speaking, the word is improperly used here. It should signify, of the *prosecutor*, 'to make terms with the defence' from corrupt motives, instead of prosecuting in earnest. Cp. Plin. *Ep.* i. 20, praev. et transire dicenda; v. Glossary, *praevaricari*. 14. 'From the secrets of his stock-in-trade,'—P.; *artificium* is technical skill or knowledge. So *Div. in Caec.* § 43, after similarly ridiculing the conventionalities of an antagonist's style, he says, 'nunquam ille me opprimet consilio, nunquam ullo *artificio* pervertet, nunquam ingenio me suo labefactare atque infirmare conabitur.' 15. This repetition of the same word at the beginning of the sentence was called ἐπαναφορά, 'repetitio,' in rhetorical treatises, *e.g. Cornif.* iv. § 19. In *Div. in Caec.* Cic. similarly derides the stock rhetoric of the day, and its favourite exordia, 'Iovem ego opt. max.' and 'vellem, si fieri potuisset, iudices.'

59. With this historic infin. in animated narration (not very common in Cic.), cp. *Verr.* ii. 4. 66, rex primo nihil metuere, nihil suspicari, dies unus alter plures: non referri, and § 177, *infra*. In passages expressive of emotion, or picturing a passing series of events, the infin. is often used, as expressing the simple fact of action without the ordinary grammatical qualifications: as a man in alarm will cry 'Murder!' It is a return to primitive speech. R. 1359, r. 539. 21. **loco**, 'commonplace,' 'hackneyed appeal': *loci communes* is the general expression in rhetorical treatises: '*general* passages,')('those with a *special* reference.' V. *de Orat.* i. § 56, cum illi in dicendo inciderint loci . . . ut de dis immortalibus, de pietate . . . sit dicendum (with Prof. Wilkins' note); *ib.* iii. § 107, alii autem (loci communes) habent *deprecationem* aut miseratio-

nem. 23. Plaut. *Poen.* 789, obtorto collo trahere; *Verr.* ii. 4. 24, obtorta gula abripi. 25. **sententiis**, 'verdict,' as made up of individual votes.

C. Oppianicus' Trial.

XXII.—27. **persona**, 'character'; v. Glossary, and critical note. 29. **praeiudiciis**, 'previous decisions'; v. Glossary. 30. **Fabriciorum**: only C. was concerned, L. being dead (§§ 46, 47). But the plural (of vague expression) is used to include Scamander. As a libertus of the Fabricii he might take their name. In § 62 Cic. uses the sing. *Fabricium.* 31. **locus . . . constitutus**, § 56, l. 20, n.

60.—Page 23, l. 5. **si . . . condemnassent . . . consentire . . . debuerunt**; an *apparently* irregular conditional sentence: in reality the infin. with the modal verb *debuerunt* is equivalent to the plup. subj. *consensissent*, and is substituted for it. Another substitute is fut. participle with *fui* or *eram*. So in the pass. we have the plup. subj. replaced by the gerundive with *fui*. These substituted forms differ from the ordinary forms in expressing *positive* duty, intention, probability, etc.: where the apodosis is dependent on some particle which takes the subj., the substituted form is, as a rule, preferred, that the subj. may not have double duty to do. Thus a sentence like *Sest.* § 62, quod ille si repudiasset, dubitatis *quin* ei vis *esset adlata*? (for adferenda fuerit) is very exceptional. Madv. § 381. Cp. Bradley's *Arn.* § 461 (R. 1564-1570, r. 652). 8. **rescinderent**, as also **absolverent, liberarent** below (ll. 12, 14) is a dubitative subj. (subj. *interrogative* of a command) in past time. We have a kindred usage in § 90, exspectasset (ubi v. n.), and to take a case of an imperf., Liv. xlv. 37. 4, non triumphum impediri debuit sed postero die . . . nomen *deferret*; in these the subj. is *assertive* of a command given in past time. The two appear together in a line of Plaut., C. non ego illi argentum redderem? M. non redderes.—*Tr.* 133. 10. **minister in maleficio . . . conscius . . .**, 'instrumental in his crime . . . an accessory to it.'

61.—14. **illa iudicia senatoria**, 'the senatorial juries of the day.' Originally the juries for *quaestiones perpetuae* were taken from the senatorial order. In B.C. 122, the privilege of serving on juries was transferred by C. Gracchus to the party of his own creation, the equestrian order: this was by the lex Sempronia iudiciaria. Successive attempts were made by the Senate to recover the privilege: *e.g.* the lex Servilia of B.C. 106 (§ 140). But it was only in B.C. 81 that they recovered it absolutely, by the lex Cornelia of L. Sulla. The Senate in general abused it in favour of corrupt provincial governors: the condemnation of Verres came too late to retrieve the credit of that order: and in B.C. 70, the lex Aurelia of Cotta vested the privilege in three orders jointly—the Senate, Equites, and Tribuni aerarii (the last named being clerks or treasury officials whose function it was to receive and disburse the *tribu-*

tum). (V. Ry. *Rom. Ant.* pp. 292, 293.) We seem to have an allusion to the three orders in *ad Att.* i. 16. 3, maculosi senatores, nudi equites, tribuni non tam aerarii, ut appellantur, quam aerati, 'Senators under a stigma, destitute knights, paymasters who should rather be called pay-takers' (adopting Prof. Tyrrell's reading). **invidia**: the crisis which preceded the passing of the lex Aurelia is described thus, *Verr.* i. § 2, nunc in ipso discrimine ordinis iudiciorumque vestrorum cum sint parati qui contionibus et legibus hanc invidiam senatus inflammare conentur, cet. The agitation of the tribune Quinctius after the 'iudicium Iunianum' (§§ 79, 93) is mainly meant. 17. The following passage is an example of an *altercatio*, which is opposed by the rhetoricians to *perpetua oratio*. 18. **responderent**, n. on *rescinderent*, l. 8. Perhaps, however, it is better to treat the subj. as hypothetical. The imperf. is preferred to the pluperf., because the condition is one *possible* at the time of its making, but falling in the province of things past. Cp. *necaretur*, § 45, l. 10, with note; § 105, l. 12, n. **si qui**: cp. n. on § 7, si qui deus. We should expect *si quis*. 19. **quod . . . voluisset**, v. crit. n. It is *suboblique*: that is, an oblique dependent clause cropping up in *Or. Recta*. It is a *reported* reason; the reason which they themselves entertained at a previous time (that of the condemnation) and report now in terms applicable to the reason of *another person*. 'We did it, on the ground that he had desired,' etc. Cp. R. 1744 (with ex. from Hor. *Ep.* i. 10. 49), r. 740. 2. [I should take the words *nempe . . . voluisset* as Cicero's, not as the jurors' answer. 'No doubt you will say you did it, because in your opinion he had wished.' *Quod . . . voluerat* would be a reason *now* given for their former action: (as in § 55, quod dicebat:) possibly quite a different reason from that on which they formerly acted.—H. J. R.] 21. **consequebatur**: mark the tense. 'What was he likely to gain?' 25. **probabatur**: cp. § 101, nummarius interpres pacis et concordiae non probabatur; where the verb, personally used, has the same sense: for which v. Gloss. 27. **inconstantiam**, 'inconsistency'—sc. sibi non constabant res iudicatae: **libidinem**, 'caprice,' is always used in a bad sense. It signifies '*unregulated* desire' as opposed to *voluntas*, and even *cupido*: so *libet* 'it is my fancy,' but *volo* 'I will,' *cupio*, 'I wish,' *placet*, 'it is my resolve.' *Quilibet*, any one taken at random: *quivis*, any one you please.

62.—29. **videtis**: v. Gloss.

XXIII.—**Page 24**, l. 1. For T. Accius v. § 156, adulescens bonus et disertus: and Cic. *Brut.* § 271, itaque ne hos quidem equites Romanos, amicos nostros, qui nuper mortui sunt [shortly before B.C. 46], omittam, P. Cominium Spoletinum . . ., T. Accium Pisaurensem, cuius accusationi respondi pro A. Cluentio; qui et adcurate dicebat et satis copiose, eratque praeterea doctus Hermagorae praeceptis, quibus etsi ornamenta non satis opima dicendi, tamen, ut hastae velitibus amentatae, sic apta quaedam et parata singulis causarum generibus argumenta traduntur. V. also

crit. n. 2. **Fabricios**, cp. n. on § 59. 3. **illa iudicia . . . quibus in iudiciis**, v. n. on p. 19, l. 1. 4. **a Staieno solo**, cp. § 55, omnibus sententiis praeter unam, quam suam Staienus esse dicebat, Scamander prima actione condemnatus est. 9. For the use of **inquam** to emphasise the doubling of the same word or idea, cp. crit. n. on § 65, negate inquam meo loco. 10. **exstat memoria**, 'there is living memory to appeal to.' Cp. crit. n. for the variant *exstant memoriae*. **tabulae publicae**, cp. *Sull.* § 42, indicium relatum in tabulas publicas, of the evidence of the Allobroges against the Catilinarian conspirators; *Balb.* § 11, quod ille in tabulas publicas rettulisset, of the accounts of a provincial governor; *infr.* § 86, haerebat in tabulis publicis reus et accusator, of the official roll of cases to be tried. Thus *tabulae publicae* is used of any kind of official document. 'It is evident from this passage, and from § 99, that a record of the whole proceedings in criminal trials was carefully preserved, for we find Cicero appealing to the depositions of witnesses taken several years before as documents readily accessible.'—Ry. 13. **in male dicti loco**, cp. hoc in beneficii loco petitum est ab Apronio, *Verr.* ii. 3. 114. *In locum alicuius* always means 'to take the place of': *e.g. Phil.* xi. § 11, quid Bestiam? qui consulatum in Bruti locum se petere profitetur: the implied idea of *succedere* justifying the accus. *In loco alicuius* is 'in place of,' 'by way of,' 'as,' ἐν μέρει. **male dictum** is similarly opposed to *crimen* elsewhere (*Font.* § 27), as a 'slander' or 'aspersion' to a 'formal charge': cp. *Muren.* § 13, adripere maledictum ex trivio aut scurrarum aliquo convicio.

63.—15. **occurram**, opposite of *deesse*: § 43, tantae voluntati universorum Larinatium deesse noluit. 17. **vocat . . . iam dudum**: for the tense, cp. § 7, iam per annos octo continuos . . . audiatur. 18. **tacita**, 'unexpressed'; § 7, tacita hominum opinio; cp. n. on § 6. 'Which seems to interrupt me with—"What! you deny that the jury on that trial was bribed?"' **ob**-, of interruption: so in Verg. lacrimis adfabar obortis, 'despite the tears that would rise' (*A.* iii. 492). 21. **si incertum fuisset . . . veri similius tamen esset**: in this conditional sentence instead of plup. we have imperf. in apodosis: expressing a *continuous state* (or in this case a *tendency*) existing in past time subject to the condition expressed. This is the *ordinary* use of the imperf. subj. in the apodosis (and, *mutatis mutandis*, the protasis) of conditional sentences, where the reference is to *past* time: the use noted in §§ 45, 61, 105, is exceptional. Cp. § 80, tum si dicerem, non audirer. It may also denote an action supposed, contrary to the fact, to be already occurring: the reference being to *present* time. So that 'hoc si diceres errares' means (*a*) of *past* time, 'had you been saying this, you would (during that time) have been in the wrong'; (*b*) of *present* time, 'had you said (or been saying) this now, you would be (or have been) now wrong.' [We may add the exceptional use in *past* time, 'supposing you to have said this (you may or may not have said it), you would have been in the wrong.']

Thus R. 1530 c, r. 638 c; Bradley's *Arn.* § 456.[1] 22. **veri similius . . . eum potius corrupisse**: a pleonastic doubling of the comparative. So *Pis.* § 14, mihi quaevis fuga potius quam ulla provincia esset optatior. So too we have *potius malle*, *magis malle*, *rursus revocari*. 26. **alia ratione**, alia quacunque ratione, sc. nisi iudices corrumperet, 'upon any other supposition,' 'in any other case.' V. L. and Short sub. voc. *alius*, I. A. *sub. fin.*, for this use. 28. **offendisset**, 'had been unsuccessful.' Cp. offensionis, § 10 n.

64.—30. **inimicus**, v. crit. n. 32. Cic. here with the naïve dogmatism of an advocate proceeds to base his main argument on a logical fallacy. The dilemma propounded can be eluded by a third hypothesis—that in fact *both* parties bribed. And this has the sanction of a previous utterance of Cicero himself: *Verr.* i. §§ 38, 39, cognoscet ex me populus Romanus, quid sit . . . quod inventus sit senator, qui cum iudex esset, in eodem iudicio et ab reo pecuniam acciperet quam iudicibus divideret et ab accusatore ut reum condemnaret. (Quint. v. 10. 68, quotes the argument with approval.)

XXIV. 65.—**Page 25**, l. 11. **Statium Albium** Oppianicum. *Nomen* and *cognomen* seem to be used almost indifferently in designating a person. So Cluentius is constantly called Habitus. Cp. § 9 *init.*; there the words of the indictment against Cluentius seem to be quoted (cp. n. on *quo*): here Cicero frames his own indictment as a retort, and it seems as though 'Statius Albius' were a more formal designation than 'Oppianicus.' 15. **negate, inquam, meo loco**, 'deny it, I say, though you should interrupt me in order to make the denial.' Cp. crit. n.: *meo loco* is the Greek ἐν τῷ ἐμῷ ὕδατι (an expression derived from the use in court of the clepsydra or water-clock). Whichever reading we adopt, it is implied that the counsel for the defence might not be interrupted in the course of his speech by the prosecution, except upon his own challenge. 16. **an** introduces the second alternative in a disjunctive question (cp. n. on § 99, l. 8). Here the first alternative is not (as sometimes happens) suppressed: rather, it is contained in *quid tacetis?* 'Why are you silent? am I right in saying *silent*? *or* is it the case that you must speak in despite of yourselves?' *An* almost = *nonne*: cp. a similar sentence in § 181, where however *an* = *num*. 17. **repetistis**, sc. a Staieno, from whom the bribe-money was recovered by legal action, § 78. 18. 'How then have you the face to speak of bribery?' From its use in this connection, *os* comes to mean 'effrontery'—or, to give the nearest equivalent in the language, '*cheek*.' So Ov. *Trist.* i. 1. 113—

hos tu vel fugias vel si satis *oris* habebis
Oedipodas facito Telegonosque voces.

So in Greek ποίοις ὄμμασι; Soph. *O. T.* 1371.

[1] A different view of (*a*) is to be found in Madv. 347, *b.* 2 (Eng. trans.), but this is not so in his third German edition.

66.—21. **Repetam . . . altius**, n. on alte petito, § 58; cp. Plin. *Ep.* 8. 8, ne *longius* exempla repetamus, 'not to go far afield for instances.' 22. 'That you shall fancy you are witnessing them with your own eyes,' *videamini*, sc. *vobis*. A common ellipse: hence *videri* can often be translated 'feel': Verg. *A.* v. 231:

hos successus alit: possunt quia posse videntur.

26. **esse videatur**: Cicero ended his sentences so frequently with these words that the mannerism attracted the ridicule of his contemporaries, and the imitation of the young rhetoricians of a later day. Cp. Tac. *Dial. de Orator.* xxiii., illud tertio quoque sensu ('in every third sentence') in omnibus orationibus pro sententia positum 'esse videatur'; Quint. x. 2. 18, noveram quosdam qui se pulchre expressisse genus illud caelestis huius in dicendo viri sibi viderentur, si in clausula posuissent 'esse videatur.' Cp. endings of §§ 118, 125. (On the favourite rhythms, cp. Potts, *L. Pr. Comp.* pp. 97-99.) 32. **cupidiore**, 'more partial': cp. the phrase omnia alicui (alicuius causa) cupere. So *de Or.* ii. § 129, utimur facetiis in testem stultum cupidum levem; *Caec.* § 8, cupidior quam sapientem iudicem esse aequum est. But we might take it in the sense which it certainly bears in § 152 (sine cupiditate = integritate), 'desirous of gain,' 'grasping,' 'mercenary.'

67.—Page 26, l. 2. **ne sua quidem sententia liberatus**: cp. § 62, alter etiam ipse se condemnavit: and the account in §§ 58, 59. **acrioribus**, 'more drastic,' opp. to *leniora*. Celsus, vi. 6. 14, *acria* medicamenta, opp. to *lenia*; *ib.* vi. 6. 1, minus acrem curationem. (H. N. ap. P.) 7. **capiti ac fortunis**, a standing formula for the complex of a man's social and political rights. If he were *capite deminutus*, he had suffered the curtailment of these. There were three degrees of *capitis deminutio*: *maxima*, the loss of personal *freedom*, which involved the loss of citizenship; *minor*, the loss of full Roman *citizenship*, whether by assumption of the citizenship of another state, or by voluntary exile followed by *aquae et ignis interdictio* (which made the exercise of Roman rights at Rome impossible); *minima*, by adoption into another *family*. (V. Ry. *Rom. Ant.* pp. 84, 85.) Thus a man's *caput* comprised three things,—*libertas*, *civitas*, *familia*.

XXV.—8. **Iam**: introducing a general truth, as in § 46 (ubi v. crit. n.), § 57. 9. **monitae**, 'reminded': the original sense of the word, which is a causative from √*man*, *to think* (in mens, memini; Μοῦσαι, the goddesses who bring the past to the poet's mind): its subst. is *monumentum*, as in Verg. *A.* v. 538, monumentum et pignus amoris.

68.—11. **causam bonorum Safini Atellae**, a *cause célèbre* of the day, known as the *iudicium Safinianum* (§ 99) to Cicero's hearers. We can only conjecture what it was. Safinius was a *pupillus* or ward, whose property had (apparently) been allowed by his guardians to come to a forced sale, owing to encumbrances upon it. He seems to have sued his

guardians and lost his case, Staienus having embezzled 600,000 sesterces placed in his hands for the purpose of bribing the jury (cp. § 69, illo absoluto . . . neminem, which refers to the experience of Staienus in the *iud. Iunianum*). Staienus then kept the money to himself (*suppressit*); neither Safinius nor the purchasers of the estate (bonorum emptores) got any of it. (So Mr. Roby understands the passage. The close analogy of the conduct of Staienus in the *iud. Iunianum* makes it probable that the case went *against* Safinius.) **Atellae** might be taken as locative, 'at A.' **causam . . . recepisset**: in §§ 49, 136 we have the commoner phrase *causam suscipere.* As far as we can distinguish the words, *recipere* implies that something is undertaken as of *obligation*; *suscipere* is a voluntary undertaking. Or again, *recipere* is to undertake an office with a sense of *responsibility*, which *suscipere* does not necessarily imply: so here. Cp. *Div. in Caec.* § 26, ego in hoc iudicio mihi Siculorum causam receptam, populi Romani susceptam esse arbitror (cp. reff. in Heitland and Cowie's n.). Madv. (*de fin.* i. § 68) says, *recipiuntur* tantum ea quae demandata et tradita sic *suscipimus* ut promittamus aliquid et rationem debeamus. 14. **nec bonorum emptoribus**: The *b. emptores* (or *emptor*) were persons (or a person) who bought, not certain articles, but the whole estate of the deceased or the bankrupt, and had of course afterwards to collect the credits and defray the debts. The money given by Safinius to Staienus presumably was part of the estate sold, and therefore belonged either to Safinius, if the sale was upset, or to the purchasers, if it was upheld—On *bon. emptor* v. Gai. iii. § 78: Cic. Quinct. § 60.—[H. J. R.] 15. **non modo** (non) . . . **sed ne . . . quidem**: cp. § 9, l. 4 n. 17. **suppressiones iudiciales.** The Lat. adj. is often used to correspond with the gen. of the subst. in its various usages, especially when the subst. in question is *generic* in sense; in other words, when if sing. it takes the indefinite article in English, if plur. takes no article. Here *iudiciales* answers to *iudiciorum*, a gen. equivalent to a prepositional phrase, 'in trials.' For other instances of the adj. answering to a gen. cp. § 61, iudicia senatoria = *senatorum*, subjective gen.; § 77, invidia senatoria = *senatus*, objective gen.; § 123, dictatorium stilum = *dictatoris*, possessive gen. The use of the adj. for the *plural* gen. has not been sufficiently noticed: *e.g. Sest.* § 115, theatrales gladiatoriique consessus compared with *ib.* § 106, ludorum gladiatorumque consessu, *infr.* § 123, subscriptio censoria = censorum. 18. **iugulatum**, a strange metaphor to us: lit. 'with the throat cut': we might say colloquially, 'knocked on the head by the two previous verdicts.' So *Mil.* § 31, optabilius Miloni fuit dare iugulum P. Clodio . . . quam iugulari a vobis. The defendant may be said to be *laqueis legum constrictus*: when condemned, to be *iugulatus*. Cp. also § 84, cum faucibus premeretur. 20. **saluti desperare**: so *Mur.* § 45, quoniam sibi hic ipse desperat. The common construction is the accus.: *Mur.* § 43, ut honorem desperasse videatur; sometimes the verb takes *de* with abl., especially in Caesar.

After the battle of Cannae, the consul Varro was publicly thanked quod *de* re publica non desperasset, Liv. xxii. 61. There is no uniform distinction in meaning between the accus. and dat. constructions: in the former, the meaning is 'to give up in despair,' or 'give up hope of,' and this is preferred in phrases such as rem publicam, rei publicae statum, desperare: *ad Att.* vii. 23. 2, causa publica desperata; *ib.* § 3, desperata res est. In the dat. construction, 'to cease to hope for.' **hominem,** an emphatic *eum*. So § 49, de homine; § 50, hominis. So Demosth. constantly uses ὁ ἄνθρωπος of Philip in the *Philippics*. Cp. § 184, mulier.

69.—24. **possit,** pres. for imperf. for vividness' sake: v. crit. n. Cp. R. 1785 *sub fin.*, r. 766 *sub fin.*, R. 1789, r. 770 (several of the original tenses are retained towards the end of the piece of Or. Obl. there given). **gravari . . . quod . . . se . . . timere dicebat**: the language is pleonastic; **gravari quod . . . timeret** would be enough. (*Gravari* here means 'to *express* his reluctance'). This is common in Cicero with verbs of thinking and perceiving: *de Or.* ii. § 22, saepe ex socero meo audivi cum diceret; *Verr.* ii. 4. 1, quaeretis quo id nomine appellandum putetis. 25. **nobilissimis,** v. Gloss. *nobilitas*. **invidiam atque offensionem,** popular 'displeasure,' one of Cicero's duplicate phrases; cp. regionis et vicinitatis, § 11; mente et cogitatione, l. 30 below. For the use of *ac* in such phrases cp. *vi ac necessitate* (§ 19, with crit. n.). For the meanings of *offensio*, *offendo* in this speech v. Glossary. 27. 'Came down to a practicable demand.' *Conficio* prop. 'to make up' a sum of money: *Flacc.* § 20, in aerario nihil habent civitates: duae rationes conficiendae pecuniae, aut versura aut tributo. 30. **impurissimus**: so Gabinius is called caenum ac labes amplissimi ordinis, and again leno impurissimus, *Sest.* § 26; L. Gellius, a young rake, is called impurus adulescens et petulans, *ib.* § 110. It is a very strong term of abuse: thus *ad Att.* ix. 12. 2, it is used with some temper of Dionysius, a friend who had been false to Cicero, 'a quo impurissime haec nostra fortuna despecta est.' Modern taste is offended by the indiscriminating use of such epithets in the ancient orators. (Sylvius weakens it here by explaining it '*avarissimus*.') 31. Tr. in such cases by Or. Recta, according to English idiom: 'Nothing can suit my book better than the condemnation of O.'—a mercantile metaphor: cp. rationes putare, to settle accounts.

XXVI.—70. **Page 27,** l. 8. **miserrimis in locis et inanissimis,** v. crit. n. The plural is not easy to explain; perhaps it lends vagueness to the expression—'where all was misery and penury.' Cp. n. on § 31, l. 15, *iberos*. For the apposition of *in* with the abl. to the locative, cp. Albae in urbe opportuna, *Phil.* iv. § 6, R. 1167 (3), r. 487 c. 3. Observe that *nummi* and other names of weights and measures take the gen. plur. in *-um* only when in combination with numerals: *e.g.* tria millia nummum. R. 365 a, r. 115 a. 9. **malitia,** 'roguery': cp. the phrase *dolus*

malus; § 183, a consiliis malitiae deseruntur. 11. **quid quaeretur?** 'What shall I gain?' cp. *quaestus*. 12. **Nihil . . . necesse sit**, as P., 'Can't I hit on some way of making Oppianicus' conviction inevitable?' 13. **quid tandem**, a strengthened *quid*; often used with an ellipse of *fiet* or *fit*, as in Hor. *C.* iii. 9. 17, quid si prisca redit Venus? often, as here, to introduce a forcible question. **enim**: no 'aposiopesis' or even ellipse need be supposed. *Enim* gives the reason, not indeed for the question, but for the putting of the question. So in §§ 89, 145; cp. § 187, and n. on § 85. 15. **Praecipitantem**, here intrans.; generally trans., 'to hurl headlong.' It is used *absolutely* at times, like a neuter verb, 'to fall to ruin': *Sull.* § 1, praecipitante re publica is opposed to conservata re p. A similar usage, but far less extended, appears in the case of other verbs, *e.g.* in Liv. *moveo*, *verto*, in Verg. *rapio* and *proripio* (quo proripis, *A.* v. 741), *paro* (cui fata parent, *A.* ii. 121), *accingo* (accingunt omnes operi, *A.* ii. 235). For the metaphor, cp. § 171, a liberum Poenis actum esse praecipitem in sceleratorum sedem; Juv. i. 149, omne in praecipiti vitium stetit, 'vice is at its culminating point, its zenith.' p. **impellamus**, so Plaut. *Aul.* 590 (Ussing), quo incumbat eo impellere. 'Let us give him a push down the incline.' **perditum prosternamus**, 'let us dash him down to destruction,' Peterson. This gives a good sense, but is doubtful in point of syntax. Such prolepsis of the adj. or part. is only poetic or used with factitive verbs: the use of *praecipitem* with *dare*, *mittere*, and other verbs is almost unique. Madv. § 481, 2.[1] We get a perfectly good sense without resorting to this: 'Let us prostrate him when overthrown,' *i.e.* 'let us give him the finishing blow.' The parallelism of the two clauses is in favour of this. The incisive vigour of the conclusion is helped by the alliteration.

71.—16. **consilii**, cp. crit. n. A gen. of 'indefinite whole divided,' dependent on neut. adj. or pron. R. 1296, r. 522. 19. **destitutione**, 'for having left them in the lurch': so *de Off.* i. § 32, magisque ille cui promissum sit ab officio discedat, si se *destitutum* queratur; *Rosc. Am.* § 117, novem homines honestissimos . . . induxit decepit *destituit*. In Hor. *C.* iii. 3. 21, *d.* apparently takes an abl., ex quo destituit deos | mercede pacta Laomedon. 20. **ut erat**, cp. n. on § 23, Opp. ut erat . . . singulari audacia. **praeposterus** implies an inversion, **perversus** a twist of the natural (and, by metaphor, of the moral) disposition of things. 'If a dog were to walk into a room tail foremost, this would be described by the epithet *praep.*, if he were to come in sideways, by *perversus*.' Tr. 'with his usual reversal of the order of things.' 34. Cicero in this passage puns very facetiously (*pace* his critics) on the names of this worthy pair of jurors, Bulbus and Gutta, which, as common nouns, mean 'onion' and 'salad-oil' respectively. The *onion* seems not to have been introduced (as were eggs, shell-fish, olives, and other fruit; cp. the banquet

[1] V. also Dräg. *Hist. Synt.*[2] i. 170.

of Trimalchio in Petronius 33) at the beginning of the *cena* (the *gustatio*). Hence the perversity of Staienus in beginning with *Bulbus*—'Then again this master in cookery (*conditor totius negotii*, another pun, as conditor may come from condire or *condere*) adds a dash of Gutta-seasoning to his vegetable friend Bulbus: so that (§ 72, ll. 29, 30) those who got a tidbit of promise from the latter voted him a very palatable fellow.' Peterson doubts the pun in *conditor*; but surely *condisset* (§ 72, l. 10) leaves it beyond a doubt. Ry. says that *gutta* signifies a narrow-necked flask from which the fluid does not flow, but *drop*. I know of no authority for this statement as to the use of *gutta*: *guttus* (or *gutus*) is thus used, *e.g.* Hor. *Serm.* i. 6. 118, cum patera gutus. Prof. Nettleship suggests (*Journal of Philology*, vol. xiii. no. 25, p. 75) that *gutta* may here = στακτή; it is glossed somewhere by *unguentum*. He cp. with the expression in § 71, *Guttam aspergit huic Bulbo*, the Greek proverb τὸ ἐπὶ τῇ φακῇ μύρον. **quaesierat**, cp. n. on *quaeretur*, l. 11. **oscitantem**, 'yawning': he was famished and miserable. 22. **impellit**, 'gently touches him up.' So in Verg. of the friendly push which a deity gives to a ship, *A.* x. 246, dextra discedens impulit altam, | haud ignara modi, puppim. **Quid tu**? sc. ais, 'I say.' So often in comedy, *sed quid ais?* or *quid ais tu?* prop. 'what have you to say (to the remark I am going to make)'? Plaut. *Mil. Glor.* 358. In *Capt.* 270 we have *quid tu?* seruosne esse an liber mauelis, memora mihi. 24. **ne gratis**: the same litotes in *leg. agr.* ii. § 58, quod regi amico cavet, non reprehendo: quod *non gratis* fit indignor. 29. Cicero was a famous, and even notorious, wit. 'Noster vero non solum extra iudicia sed in ipsis etiam orationibus habitus est nimius risus affectator,' Quint. vi. 3. 3. He had a habit of attributing his jests to other people: *e.g.* in the famous instance, *Verr.* ii. 1. 121, hinc homines erant qui etiam ridiculi inveniebantur ex dolore: quorum alii . . . negabant mirandum esse, ius ('broth' or 'justice') tam nequam esse verrinum. V. also *ad Att.* i. 16 (no. 8 in Watson's Selection, § 10), for the famous altercation between Cic. and Clodius in the senate. In *de Orat.* ii. § 220, we read that L. Philippus, the consul, asked Q. Catulus, a distinguished noble, 'quid latras, Catule?' [catulus = puppy]: who replied, furem se videre. This may seem to us undignified jesting, except for young schoolboys. But Italian wit revelled in personalities: cp. the cognomina Naso (big-nosed), Habitus (stout), Flaccus (flap-eared), Balbus (stammerer), etc.

72.—30. **speculae**, n. on *mulierculam*, § 37. 31. For the construction cp. § 28, dies nondum decem intercesserant cum ille . . . necatur. **sequester** (§ 25, n.), a depositary for the money: **confirmator**, a security for its payment. **hilaro**, for the form cp. crit. n. **voltu**; so Verg. *A.* i. 209, spem *voltu* simulat. 32. **hominem**, § 68, l. 20. **Page 28**, l. 1. Staienus is mentioned in the *Brutus*, § 241, et C. Staienus *qui se ipse adoptaverat et de Staieno Aelium fecerat* fervido quodam et petulanti et furioso genere dicendi: quod quia multis gratum erat et probabatur,

ascendisset ad honores, nisi in facinore manifesto deprehensus poenas legibus et iudicio dedisset. There were several *familiae* in the gens Aelia with *cognomina* Lamia, Ligus, Paetus, etc. : Staienus had taken the cognomen Paetus, therein showing more sagacity than the Sextus Aelius who is ridiculed in *Sest.* § 69 for having assumed the ancient *cognomen* of Ligus—'cognomen sibi ex Aeliorum imaginibus arripuit, quo magis nationis eius esse quam generis videretur.' The *tribe* of the Ligures was notorious for its treachery : Verg. *A.* xi. 715, vane Ligus, where Serv. quotes Cato *Originum* ii., 'sed ipsi unde oriundi sunt exacta memoria, inlitterati mendacesque sunt et vera minus meminere.' **ex imaginibus Aeliorum**, 'from the family tree of the Aelii' : *imaginibus = stemmate.* On either side of the *atrium* in a Roman noble's house were placed the *imagines* or wax masks (expressi cera voltus, Plin. *N. H.* xxxv. 6) of his ancestors, each in its little shrine (*armarium*, ναΐδιον, Polyb.) ; attached to each was a *titulus* declaring the honours achieved in life by the man portrayed, and from one to another painted lines were drawn to express the pedigree which connected them. Only families in which curule office had been attained enjoyed the right to display these (the *ius imaginum* ; cp. Glossary on *nobilitas*). When a funeral took place in the family, the masks were taken out of their shrines and worn by persons who walked before the bier in the garb and with the insignia (including the lictors) which had belonged to the deceased ancestor : so that the Roman noble was literally preceded to the grave by his ancestry. On this subject Plin. *N. H.* 35. 6, Polyb. 6. 53, Juv. viii. 1, are *loci classici*; v. Prof. Mayor on the last. Consult also Rich, *Dict. Ant.* art. *Imagines.*[1] 4. **planus** = πλάνος, an impostor : Hor. *Ep.* i. 17. 58, fracto crure planum. V. crit. n. 5. **pecuniae . . . incubaret** : Verg. *G.* ii. 507, condit opes alius defossoque incubat auro, 'broods over.' 7. **fictos**, 'hypocritical' : cp. § 137, fictis querimonius. **totus ex fraude et mendacio factus** : a little more strongly in *Q. Rosc.* § 20, nonne ab imis unguibus usque ad verticem summum . . . ex fraude, fallaciis, mendaciis constare totus videtur? qui idcirco capite et superciliis semper est rasis, ne ullum pilum boni viri habere dicatur. 12. **testimonii** : same gen. as *consilii*, § 71. **palam**, cp. § 55, quaesivit ab reo . . . quaesitor ex lege Cornelia . . . clam an palam de se sententiam ferri vellet : and § 75.

XXVII. 73.—17. **obscuritate**, 'mystification,' here subjective, instead of (as usual) objective, 'mysteriousness.' Cp. *gloria*, 'vain ambition,' § 11 n. ; *humilitas*, humble behaviour. So 'uncertainty' in English. 18. 'Had somehow got wind of the fact that S. had been bribed.'—P. Cp. Plaut. *Trin.* 615, quid illic festinet sentio et subolet mihi. A metaphor from the chase : *Verr.* ii. 4. 31, canes venaticos diceres—ita odorabantur omnia et pervestigabant, ut, ubi quidque esset, aliqua ratione invenirent. 20. **placuit repente pronuntiari** : DIXERUNT. This announcement that

[1] Momms. and Marq. vii. pp. 235, 342.

the pleadings and evidence on both sides were completed was made by the *praeco* or crier of the court, and was followed by the consultation of the jury upon their verdict. Cp. § 55, and n. on § 56, l. 13. So *Verr.* ii. 2. 75, praeco DIXISSE pronuntiat: and Pseudo-Asconius on *Verr.* i. § 56, 'moris veterum fuit, cum satis visum esset fluxisse verborum, hanc sibi necessitatem finiendae orationis imponere, ut dicerent ad ultimum DIXI; quod etiam, ab utraque parte oratione consumpta, ut in consilium dimitterentur, praeco solebat pronuntiare DIXERUNT.'

74.—22. **In consilium erant ituri**, cp. n. on § 55. 23. **iudices xxxii**: not (as Manutius supposes) *exclusive* of Staienus. As we shall see, there were 32 in the panel; and Oppianicus hoped to get Staienus' vote with that of those whom he was to bribe, that is, to get 17 votes against 15. (The number of jurors who served for any particular trial was regulated by the law under which the trial took place: we find examples of 50, 70, 75, etc.—Ry. *Rom. Ant.* p. 296.) **Sententiis xvi absolutio confici poterat**: it appears that if the votes were even the accused was acquitted; 17 were secured to make 'assurance double sure.' Otherwise the words mean '16 votes were enough for an acquittal, assuming Staienus' vote to be safe.' But Zumpt holds that an equality of votes was sufficient for acquittal (Criminal Proz. p. 367 n.). **conficere**, so § 69, l. 27. 25. **ad cumulum**, 'to crown it.' *Cumulus* is here 'the crown' or 'summit' of the heap: so *leg. agr.* ii. § 62, accesserint *in* cumulum manubiae vestrorum imperatorum, where *in* (as *ad* here) is *final* in sense, 'for.' So *cumulatus* = 'topped with a *cumulus*,' *i.e.* 'perfect'; just as *coronatus*, *virgatus*, mean 'with a crown,' 'with stripes.' This sense of *cumulus* (which generally denotes the *whole heap*) is clear from *ad Att.* xvi. 11. 2 (no. 122 in Watson), de laudibus Dolabellae deruam cumulum; *Marcell.* § 34, ad tua in me . . . merita . . . maximus hoc tuo facto cumulus accesserit. In Verg. *A.* iv. 436 (a passage which still perhaps awaits a solution), quam mihi cum dederis [v. l. dederit] *cumulatam* [v. l. —ta] morte remittam, this meaning is probable: 'which when you have granted me, I will repay it *in full measure* at my death,' rather than 'with interest' (as generally taken): *cumulatus* implies 'good measure pressed down and running over.' 28. **Staienus ipse non aderat**: 'observe the loose practice of the Roman courts, which permitted a juror to be absent while the cause on which he sat was actually in progress.'—Ry. 29. **iudicem**, an arbitrator in a civil suit. § 120, neminem voluerunt maiores nostri . . . ne pecuniaria quidem de re minima esse iudicem, nisi qui inter adversarios convenisset. 'In *actiones ordinariae* the praetor appointed one or more umpires, for whom the general term is *iudex*, to inquire into the facts of the case and to pronounce judgment, but he previously instructed the *iudex* as to the points of law involved,' in other words, gave him his *formula*.—Ry. *Rom. Ant.* p. 276. 32. **convicium**, v. Glossary. 33. **viatores** were apparitors attached to certain magistrates. Some, *e.g.* the consuls, had both *lictores*

and *viatores*, the special function of the latter being to carry messages and summons. The tribunes of the plebs had only *viatores*. By them they might exercise their *ius prehensionis* (Ry. *Rom. Ant.* p. 143). Cp. Mommsen, *R. Staatsr.* i.², p. 262.—The proceedings of L. Quinctius illustrate the position of the tribunes at this time. He has no right of '*intercession*' as against a criminal court (*quaestio*) or its president (*quaesitor*). So *Vatin.* § 33, quaero fecerisne quod in hac re publica . . . in omni memoria est omnino inauditum? appellarisne tribunos plebis ne causam diceres? (this was after being cited by the praetor.) Quinctius could *delay* this trial without resorting to intercession. The law under which the *quaestio* was constituted generally forbade *intercessio* expressly. Turning to l. 2, p. 29, **pro potestate dimitti iussit**, we have here an instance of tribunician '*prohibition*,'—a less formidable weapon than intercession, for it did not annul the act in question, but merely threatened the agent with *coercitio* (in its various forms, arrest, fining, execution, etc.) in case of disobedience. While Sulla limited still more the use of 'intercession' by the tribunes, he left them the right of 'prohibition' in full. Mommsen, *R. Staatsr.* i. p. 262; ii. pp. 286, 297. **Page 29**, l. 1. **publico iudicio . . . privatum iudicium**: the distinction answers roughly to that between *criminal* and *civil* cases with us; in the latter an individual citizen, in the former the state, is held to have been aggrieved. Ry. *Rom. Ant.* 275.

75.—3. Cp. notes on § 55, ll. 32, 33. 6. **nummarii**, 'pensioners,' so § 101, nummarius interpres. 7. **in Campo**, sc. Martio, where the *comitia* were held. Often so designated: Hor. *C.* iii. 1. 11, descendat in Campum petitor, i. 8. 3, cur apricum oderit Campum.

XXVIII.—14. **Ecce tibi**, 'lo and behold,' a dat. of the *person interested* in the statement, R. 1150, r. 478; only used in the case of personal pronouns. *Cornif.* iv. § 14 is a good example: deinde, ubi visum est ut in alveum descenderet, ecce tibi iste de transvorso 'heus' inquit 'adulescens, pueri tui modo me pulsarunt; satisfacias oportet! In the present passage it gives an ironical tone; sometimes merely invites attention. So in English: *e.g.* Shakespeare, 2 *Hen. IV.* iii. 2. 304: 'There was a little quiver fellow, and a' would manage *you* his piece thus, and come *you* in and come *you* in.' 17. **Atque**, n. on § 56.

76.—18. **iniectus est hominibus scrupulus**: so *Caec.* § 4, sperarunt . . . se iniecturos vobis causam deliberandi, 'would set your minds working.' **ex vetere illa disciplina**, probably referring not only to their old-fashioned integrity, but also to the old-fashioned verdict which they gave (NON LIQVET), which in Cicero's time was falling into desuetude (v. Ry. *Rom. Ant.* p. 299, *ampliatio*). ['Men of the old school of trials.'—H. J. R.]. The phrase recurs in § 107 with the same reference.—Cicero sometimes uses a prepositional phrase in loose connection with a subst. *attributively* (thus here *ex disciplina* is coupled with *sapientes* as an epithet of *homines*). So *Sest.* § 64, iniuriis in socios;

ib. § 83, in rem publicam animo; *ib.* § 91, res ad communem utilitatem; *ib.* § 131, ad urbem accessus . . . iter a porta; *de Off.* i. § 43, pecuniarum translatio a iustis dominis ad alienos. The usage is not unfrequent anywhere when the subst. is a verbal noun and takes the construction of its verb, or when the connection is closer, as in expressions of the types, *summum in rem publicam studium*, *Ciceronis in rem publicam studium.* Exx. of the looser usage are frequent in Livy. 22. **suspicio**, sc. eum pecunia oppugnatum esse. **primo**=*prima actione* (MAN.); for the meaning of which v. n. on § 55, l. 5. Contrast § 106, paulo posterius patefacta re. Mr. Nettleship quotes *Verr.* ii. 1. 26, 'non *primo* iudicare': opp. *ampliare*, Liv. xliii. 2. 6, bis ampliatus, tertio absolutus est reus. 23. Cp. §§ 106, 107. We shall find reason to conclude that *nine* voted N. L., *five* A. (*not guilty*), *eighteen* C. (*guilty*). 24. **qui hoc statuerunt,** v. crit. n. **hoc**: sc. they were confident in the justice of a pure motive, although others (Bulbus, Staienus, etc.) were known to have voted in the same way from a *corrupt* motive. 27. 'Five in all.' 30. **ambitione**: 'by interested motives.' Cp. § 108, qui absolvit, ambitiosus. Staienus had undertaken all Oppianicus' bribing for him, and had appropriated the lump sum intrusted to him. Therefore *ambitio* can here hardly imply a positive bribe. Indeed, it is doubtful if it *could* bear that meaning in Cic., who uses *ambitus* thus. 'The only bad sense *ambitio* has is 'political jobbery,' Reid on *Sull.* § 4. It is remarkable that Cic. does not venture to hint at any bribery in the case of those who voted N. L., or those who acquitted.

77.—31. Cp. Liv. xxii. 26. 4, haud parum callide *auram* favoris popularis *ex dictatoria invidia* petiit. So § 130, ventum popularem esse quaesitum; § 131 (which explains the expression), rumorem quendam et plausum popularem esse quaesitum; Hor. *C.* iii. 2. 19, nec sumit aut ponit secures | arbitrio popularis aurae. ['Quinctius, a man devoted above everything to the people, one who had set himself to catch every breeze produced by town talk or popular meetings.'—H. J. R.] Q. laid himself out to be popular, 'filled his sails' (P.) with the breath of the 'vox populi.'

Page 30, l. 1. **invidia senatoria**, v. n. on § 68, l. 17, for the use of the adj.; cp. Liv. l.c. 2. 'He addressed the people in one or two forcible and severe speeches.' 3. **vehemens et gravis**, one of Cicero's favourite duplicate expressions: so *Catil.* i. § 3, senatus consultum in te vehemens et grave. *Contiones* is used in § 127 in the same sense: v. Glossary. 5. **agi**, cp. § 3, agitur in criminibus A. Cluenti proprium periculum: 'are at stake.' **nulla esse iudicia**, 'fair trial was a thing of the past.' So Ov. *Her.* x. 11—Ariadne waking finds Theseus gone—'*nullus erat*, referoque manus, iterumque retempto, | perque torum moveo bracchia, *nullus erat*'; Sall. *Hist. Fr.* i., (*Lepidi oratio*) quies et otium cum libertate . . . *nulla sunt.* 6. **qui pecuniosum . . . posse**: almost identical words in *Verr.* i. § 1, inveteravit iam opinio . . . his iudiciis quae nunc sunt pecuniosum hominem, quamvis sit nocens, neminem posse damnari. 8. **virum** . . .

hominem: here (as generally, when the words occur together) *vir* refers to public character, *homo* to private character: so *Sex. Rosc.* § 51, cum apud maiores nostros summi viri clarissimique homines . . . in agris colendis aliquantum operae . . . consumpserint; *Mur.* § 14, virum bonum atque integrum hominem. The contrast is different in *Ep. ad Q. Fr.* ii. 11, virum te putabo, si Sallusti Empedoclea legeris; hominem non putabo, where the former connotes *virtus*, 'courage,' the latter *humanitas*, 'culture.' But sometimes the word is altered merely for variety, as *infra*, § 177, homine valente . . . vir dissolutissimus. 10. **in medium vocare**: cp. in medio ponere, de medio removere, in medium proferre (§ 101). The metaphor is taken from the racecourse or arena. Cp. ἐς μέσον τιθέναι, properly 'to place the prize in the ring to be competed for,' as in Hom. *Il.* xxiii. 704.

78.—16. **consulto** belongs to a small class of adverbs which are ablatives of the past part. in *-tus*, such as *auspicato* ('auspices having been taken'), *sortito*, *composito*, *explorato* ('it having been reconnoitred'), *festinato*, *necopinato* and *improviso* ('it being unexpected'), *merito* (R. 1253). They are really *impersonal* ablatives absolute. Sometimes we have the abl. of the part. with a subject-clause dependent, as Cic. *de Fin.* ii. § 85, perfecto et concluso neque virtutibus neque amicitiis usquam locum esse; Liv. xxxiii. 41, cognito vivere Ptolemaeum. But this is not the older usage: for the impersonal abs. part. *without* a subject-clause is commoner than it, until we come to Livy and Tacitus. 17. **in forum prolata**: so *Top.* § 75 (quoted by Ry.), multi enim in res odiosas imprudentes inciderunt, ut Staieno nuper accidit, qui ea locutus est bonis viris subauscultantibus pariete interposito, quibus patefactis in iudiciumque prolatis ille rei capitalis iure damnatus est.

XXIX.—19. **persona**, v. Glossary. 21. **pronuntiasset**, 'had promised': contrast the usual meaning, § 73, pronuntiari, 'to be proclaimed.' [Cic. uses *pronuntiare* instead of *polliceri* somewhat ironically as a more formal word, suited to systematic operations on a large scale: cp. *Planc.* § 45, *ad Att.* i. 16. 13.—H. J. R.] 22. **versatam . . . pecuniae**, § 73. 26. **in**: cp. n. on § 32. 27. **consistebat**, 'found a place,' 'held its ground': in the literal sense, § 108, nec per multitudinem concitatam consistere cuiquam in dicendo licebat. With the present passage cp. *Sex. Rosc.* § 152, in quo non modo culpa nulla sed ne suspicio quidem potuit consistere.

79.—28. **hoc in loco**, 'speaking in this place,' 'before this honourable court.' P. suggests as an alternative, 'now that I have come to this part of my speech,' but that would be *hoc loco*, as in *Sest.* § 119 (Holden), et quaeso *hoc loco* . . . ne qua levitate me ductum ad insolitum genus dicendi labi putetis; *ib.* § 86, tu *hoc loco* laudas Milonem. But in this speech, § 5, *in hoc loco*)(aliis in locis; *leg. agr.* ii. § 6, non solum *hoc in loco* dicam . . . sed in ipso senatu, *i.e.* in the Forum. **iam**, after eight years of 'invidia.' Page 31, l. 1. **potestate**, tribunicia. **conflatam**: cp. n.

on § 9, l. 9. 3. Cp. reference from *Verr.* i. § 2 (quoted § 61, l. 14) as to the agitation of Quinctius and others before the passing of the lex Aurelia. **in hanc flammam . . . iniectum**; cp. the Greek proverb, employed by Plato (*Rep.* 569 C), τὸν καπνὸν φεύγοντα εἰς τὸ πῦρ ἐκπίπτειν, and Liv. xxii. 40. 3, se populare incendium priore consulatu semustum effugisse. 4. **esse iniectum memini.** *Memini* (a present-perfect, meaning properly 'I have taken to my mind,' 'I bear in memory') takes a pres. inf. or a perf. inf.: in the former case it is implied that the subject was an eye-witness of the fact which he remembers. In the latter case this *may* be so, but is not of necessity implied. The pres. inf. implies the continuance of the action up to the time when it was 'taken into the mind.' (Cp. the construction with *cum*: memini cum ita diceret.) Cp. *Lael.* § 11, memini Catonem . . . mecum et cum Scipione disserere; on the other hand, *Rosc. Am.* § 122, meministis me ita initio distribuisse causam, where, had Cicero wished to emphasise the fact that the jurors had *witnessed* the fact, he would have said *distribuere.* Cp. *Cluent.* § 32, memoria teneo Milesiam quandam mulierem . . . rei capitalis esse damnatam. So in the ex. before us: the present-perfect force of *memini* is not felt; it is a present, and the action is simply recalled as one that took place in past time. V. Mr. Reid's admirable note on *Lael.* § 2, in connection with R. 1372, r. 543, 4 (also Madv. 408. 2). 5. 'Already marked out by public opinion for the praetorship.' **hominem aedil.**: cp. n. on iudex quaestionis, § 89.

80.—8. **Neque me paenitet**, 'I am not sorry,' 'dissatisfied,' a common meaning of the word: Liv. i. 8. 3, me haud paenitet eorum sententiae esse, 'I am quite satisfied to be of their opinion'; Plaut. *Trin.* 321, is probus est quem paenitet quam probus sit; *de Off.* i. § 2, quoad te quantum proficias non paenitebit. On Verg. *E.* ii. 33, Servius explains *paeniteat* by 'parum videatur.' 9. 'His case remains the same in its absolute unchangeableness' (P.). The indic. *potest* states the fact as unconditioned and absolute. 12. **nunc**, cp. n. on § 120. 13. **quorum** = penes quos, R. 1282, r. 517. 15. **tum si dicerem non audirer**: refer to § 63, l. 21, for this use of the imperf. subj. to denote continuous action *unfulfilled* (*i.e.* supposed contrary to fact to exist) in past time. 'Not that the case *was* different,' not (as P.) 'would have been.' Subj. of the untrue reason, R. 1744, r. 740.

XXX.—17. **auderet**, n. on l. 15. So **posset, liceret**, *infra.* 22. 'That it was only after he had been condemned . . . that Opp. was put upon his trial,' *tum denique, cum.*

81.—24. **dies**, 'time': Hor. *C.* iii. 6. 45, damnosa quid non imminuit dies? 30. **condemnatum**, sc. praeiudiciis: cp. § 49, ita reum citatum esse illum, ut re semel atque iterum praeiudicata condemnatus in iudicium venerit. 31. **ut ne eripi quidem pecunia posset**—*not* 'so that not even bribery could have saved him' (P.): the order of the words is against this. The *ne . . . quidem* clause implies a suppressed clause with *nedum*: 'ne

eripi quidem pecunia posset (nedum ut damnaretur pecunia esset adhibenda),' "Bribery was powerless to avert a conviction—much less was it needed to procure one.' For this use of *ne* . . . *quidem* cp. *Planc.* § 90, ego vero *ne* immortalitatem *quidem* contra remp. accipiendam putarem, *nedum* emori cum pernicie reip. vellem. 31. **si absolutus fuisset . . . maneret**; for a conditional sentence of the same form v. § 63, ll. 21-23. (For the difference between *sum* and *fui*, *eram* and *fueram*, *sim* and *fuerim*, *essem* and *fuissem*, *esse* and *fuisse*, in periphrastic pass. tenses, cp. R. 1453, r. 590.) 33. **ipsam**, v. crit. n.

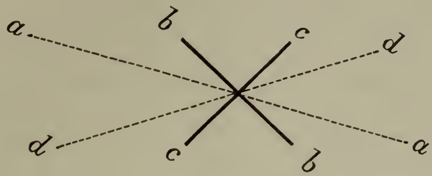
82.—**Page 32**, l. 6. **Age**, used as a continuative particle, without adaptation to the plurality of persons addressed. So Demosth. uses *ἰδέ*; cp. also Dem. *Phil.* i. § 10, ἢ βούλεσθε, εἰπέ μοι, περιιόντες αὐτῶν πυνθάνεσθαι; so in § 197. 7. **profectio** = *unde profecta sit*, l. 28 *supra*. Generally applied to persons: it is verbal subst. of *proficiscor*, which, analysed into its elements [*pro-*, *fic-*, root of *facio*, *i-sc-o-r*], means 'I begin to make (myself) forward,' *i.e.* 'I start.' 8. 'Has kept his account-books in a most business-like way.' Commentators deride this argument, and say that Cluentius would never have booked his bribes as such. But, to say nothing of the difficulty of accounting for a disbursement of 640,000 sesterces under the head of ordinary expenditure, the jurors would no more be startled into incredulity by an appeal to the ledger of a *paterfamilias* in evidence, than the assessors of income-tax are when a merchant submits his books in evidence of the amount of his income. 'A creditor's account-books were admitted in law courts as evidence of a debt under some circumstances' (Wilkins on *de Orat.* ii. § 97). On the care with which a Roman kept his accounts v. *de Orat.* l.c. and *Verr.* ii. 1. 60, audimus aliquem numquam tabulas confecisse: quae est opinio hominum de M. Antonio falsa: nam fecit diligentissime. 10. **anni sunt octo cum . . . versatur**: contrast next note; also § 28, dies nondum decem intercesserant cum . . . necatur (with note). *Here* the present is the same perfect-present which appears with *iamdudum* and other adverbs of duration. R. 1723, r. 727. 13. **cum interea . . . invenitis**; here, as in § 28, *cum* = *et tum*, and expresses the coincidence in time of two events or facts, whereas in ll. 10 and 11 *supra* it expresses the co-extension of two lengths of time. Cp. R. 1733, r. 735, for examples of *cum interim*, *cum interea*, thus used: 'For eight long years the case has exercised your thoughts, and you have hunted up, turned over, and scrutinised everything that you could find in my client's ledgers and those of other men bearing on the case; and withal you find not a trace of a bribe from Cluentius.' 15. **vobis indicibus**, v. crit. n.

83.—18. **At enim**: v. R. 1623, r. 677 b; it introduces an opponent's objection. So *at*, l. 24. 20. **cum in consilium iretur . . . cum in consilium mittebant.** It is impossible to lay down an absolutely valid rule for the use of the temporal *cum*. Generally, we may say, *any* temporal particle is followed by the indic. if the connection between the

actions expressed in the principal and the dependent verbs is a mere relation of *time* ; by the subj. if it is a connection of purpose, intention, consequence, and the like: and the principal tenses, viz., pres., perf., fut., are those commonly employed in the former case (the imperf. also *may* denote a past *state*). Thus it is with *cum*, 'when': it commonly takes pres., perf., or fut. indic., imperf. and pluperf. subj. But (*a*) *tum* may precede *cum*, marking that it gives a mere date or note of time : *Phil.* vi. § 11, oderat tum cum ille tabulis novis adversabatur. (*b*) There is the construction of '*cum* inversum': *cum=et tum*, and takes indic. R. 1733, r. 735. (*c*) But a large residuum of instances remains unexplained. From the classical period onwards there was a growing tendency to prefer the subj. in past time. But in this, as in some other matters, Cicero retains much of the practice of the early school of writers. Two German writers, Hoffmann and Lübbert (the latter in a treatise of 255 pages), have recently examined the whole subject, and compiled statistics. Caesar uses the Subj. 383 times, the Indic. 35 times ; Livy the Subj. 2864 times, the Indic. 272 times ; Tacitus the Subj. 278 times, the Indic. 94 times ;[1] whereas Plautus has the Subj. 9 times, the Indic. 229 times. As to the *Imperf. Indic.* with *cum*, Cic. has it 241 times (including the *ad Herenn.*), Caesar 4 times, Tac. once. It is frequent in Cicero's letters as a mere note of time : *ad Fam.* iii. 13. 2, cum haec scribebam . . . sperabam. Also when the subject of the two verbs is the same : especially when the *cum* clause appends an *explanation*, as *Verr.* ii. I. 121, ridiculi videbantur esse, cum Sacerdotem exsecrabantur. But the present passage shows how capricious the usage is. Hoffmann's distinction between the absolute time of the indic. and the relative time of the subj. (for which v. the account in Lewis and Short, art. 2. *cum*, C., which is as clear as may be) does not help us much here. The accident of identity of subjects to *mittebant* and *requirebant* may have led to the use of the indic. in the latter of the two *cum*-clauses (v. R. 1729, r. 731). Draeger's parallels are not exact : the comparison of *Tusc.* ii. § 35, cum varices secabantur C. Mario, laborabat, with *ib.* § 53, C. Marius cum secaretur . . . vetuit se adligari, is misleading: the former passage gives a *mere* definition of *labor*, sc. *dolor*; not so the latter. A speaker is happily innocent of the subtleties of scientific grammar, as he chooses his words. His ear, and the unconscious memory of his previous usage, determine his choice to a large extent. Style is something between a growth and a fabric; it is neither of these exclusively. It is not even exempt from physical restrictions. The 'personal factor' may at any time enter and upset the calculations of science. [The chapter in Roby on the 'Subj. (F), Attendant Circumstances' will be found to be the most practical authority on this question.] 21. On the retirement of the jury to consider their verdict, cp. n. on § 55. 22. **Oppianicus querebatur** : the force of the

[1] Dräg. *Hist. Synt.* ii.[2] p. 543. I presume these instances are all in past time.

tense is best given, 'it was Opp. who complained, it was Quinctius who demanded' (H. J. R.). 26. **si istinc . . . audacia est: hinc . . . causa.** The elaborated chiasmus of these sentences is noticeable: its form being—



Four matters (caus. corr. iud., pecunia, Staienus, fraus et aud.) are enumerated in the order *a b c d*: then follow their opposites in the order *d c b a*: and the whole system in its two parts has anaphora: *istinc* . . . four times, *hinc* . . . four times. V. § 101 for another instance of elaborate chiasmus, § 183. There is a similar antithesis in *Catil.* ii. § 25, between *hinc* and *illinc*—ex hac enim parte pudor pugnat, illinc petulantia, hinc pudicitia, illinc stuprum: hinc fides, illinc fraudatio, cet. 30. There is a variant **patiamini** (v. crit. n.). The use of the 2d pers. pres. subj. of *command* addressed to a *definite* person is not Ciceronian, except as found in *letters*. V. notes on p. 11, l. 21, p. 2, l. 30.

XXXI. 84.—**Page 33**, l. 2. 'To make up the quarrel' between Opp. and Cluentius. Cp. *Phil.* ii. § 118, redi cum re publica in gratiam; *infra*, l. 26. 3. **Tene hoc dicere**: inf. of exclamation, or infinitivus indignantis. It is simply the accus. of the verbal noun used *interjectionally*, *i.e.* without any predication. This appears from *Verr.* ii. 5. 62, huncine hominem! hancine impudentiam, iudices! hanc audaciam! civitatibus pro numero militum pecuniarum summas discribere! No ellipse of a predicate need be supposed. The inf. conveys the abstract idea of action undefined as to person, number, and mood (cp. n. on the historic inf. § 59. Cp. *de Fin.* ii. § 29, hoc vero non videre! where it has no subject. R. 1358, r. 538. So Verg. *A.* i. 37, mene incepto desistere victam; Ar. *Nub.* 819, τὸ Δία νομίζειν, ὄντα τηλικουτονί. It would seem not to be a question: the particle *ne*, so often affixed to the emphatic word, simply enforces the exclamation. 4. The reference is to Hes. *Op.* 293—

> οὗτος μὲν πανάριστος ὃς αὐτὸς πάντα νοήσῃ,
> ἐσθλὸς δ' αὖ κἀκεῖνος ὃς εὖ εἰπόντι πίθηται·
> ὃς δέ κε μήτ' αὐτὸς νοέῃ μήτ' ἄλλου ἀκούων
> ἐν θυμῷ βάλληται, ὁ δ' αὖτ' ἀχρήϊος ἀνήρ.

It is a favourite commonplace: Ar. *Eth.* i. 4. 7, of the ἀρχαί of morality; Liv. xxii. 29. 7, saepe ego audivi . . . eum primum esse virum qui ipse consulat, quid in rem sit, secundum eum, qui bene monenti obediat, cet. So Soph. *Antig.* 720-723: 'According to the proverb, he

is the wisest man who strikes upon the right idea unprompted; and next comes he who acts upon the happy thoughts of another.' 5. **ipsi**: the dat., not the gen., is always used in this phrase, the *person* being thus kept more prominent. R. 1154, r. 480, B. Arn. § 257. The thing recalled may appear in the gen. case, venit mihi Platonis in mentem, or as a dependent clause or infin., R. 1332, r. 529; *infra*, § 122, qui vobis in mentem venit haec appellare iudicia? § 183, mihi venit in mentem quid dici possit. 10. **cum faucibus premeretur**, cp. iugulatum, § 68. **faucibus**, abl. of 'part concerned.'—R. 1210. **sive**, used thus to attach not a sentence with its verb, but some member of the sentence (*e.g.* adverbial phrase); used, too, to co-ordinate, not to subordinate, is not common. It generally appends, as here, a *preferable* alternative (*sive=sive potius*): *Brut.* § 180, oratorum sive rabularum. [Even with the other reading, *sive* does not introduce a fresh sentence but an alternative expression for *excogitavit.*] 11. Consult crit. n.

85.—12. **tum**, at the time of Opp.'s trial: cp. § 34, l. 14. 15. **extra ordinem**, 'irregularly.' 18. **adversarium**; perhaps (as P. suggests) in the contest for the aedileship, v. § 69, though it generally denotes an antagonist in a lawsuit, *e.g.* in § 120, qui inter adversarios convenisset. 'If (*as I grant*) C. showed want of principle in this, *I explain his conduct by* his desire to be rid of an opponent' (H. N. ap. P.). Instead of saying *si . . . fuit, . . . voluit* ('in being . . . he simply wished . . .'), Cic. substitutes another apodosis, *videtur voluisse*: for the *statement of a fact* he substitutes the *fact* of its statement by *him*. This and the converse exchange are not uncommon. The converse exchange appears in sentences prefaced by *at enim* (§ 83, not 'Staienus *was*' but '*you say that* S. was'), in *condemnarat cum praesertim* . . . (§ 103, n.), in § 113, iam ergo aliquis . . . condemnavit, '*I may assert that* some one condemned,' and § 70, l. 13, the 'elliptic' use of *enim* (as it is called): § 187, the similar use of *nam.* Also cp. § 131 *ad fin.*, homines sapientissimi, *ut* nihil dicam de eis . . . dixerunt,' where *ut* gives the purpose, not of the action (*dixerunt*) but of *its mention.* Cp. Hor. *Ep.* i. 12. 25—

> ne tamen ignores quo sit Romana loco res
> *Cantaber* Agrippae Claudi virtute Neronis
> Armenius *cecidit.*

'(I tell you that) the Cantabrian is fallen, lest . . .' *Caec.* § 14, ne forte quaeratis, num propinquus: nihil alienius. Cp. also another instance in R. 1749, r. 743.

86.—24. **diceret . . . fateretur**: cp. § 80 for the same form of conditional sentence. 25. 'That you should have revived the same farce which was then hissed and hooted off the stage.' A duplicate phrase: both words are applied to the act of hissing performers off the

stage, *eicio* being the stronger. *Sest.* § 118, cantorum ipsorum vocibus eiciebatur. 27. **haerebat**: their names 'were down in black and white'; ut tolli non posset.—MAN. 30. **calumniae**, v. Gloss.

XXXII. 87.—31. **praevaricaretur**, v. Gloss. So for **sequestre.** 32. **ad corrumpendum iudicium pertinet** = is an act of judicial corruption as much as the act of bribing jurors (Ry.); corrupti iudicii genus est. —MAN. Here *iud.* = 'trial.' **Page 34**, l. 3. **ageretur**, dubitative subj. in past time; cp. n. on § 60, *rescinderent.* 10. **quadraginta istorum accessio**, 'the odd forty thousand.' [Cf. *Rab. Post.* § 31, mille talentum accessionem . . . mille talentum decessionem: *Verr.* ii. 3. 76, 83, 117, 118.—H. J. R.] 12. **Archimedes**, as great a name to the ancients as that of Newton is to us: he was a mathematician and astronomer. Cicero himself, when quaestor in Sicily, discovered his tomb at Syracuse: *Tusc.* v. § 65, animum adverti columellam non multum e dumis eminentem in qua inerat sphaerae figura et cylindri. . . . Ita nobilissima Graeciae civitas . . . sui civis unius acutissimi monumentum ignorasset, nisi ab homine Arpinate didicisset. For the figure of speech here, cp. Plat. *Rep.* 487 A, *ἔστιν οὖν ὅπῃ μέμψει τοιοῦτον ἐπιτήδευμα . . .; Οὐδ' ἂν ὁ Μῶμος, ἔφη, τό γε τοιοῦτον μέμψαιτο.* **discribere**, v. crit. n. for distinction from **describere.**

D.—ALLEGED OTHER CONVICTIONS OF CLUENTIUS. THERE WAS NO **direct** CONVICTION. **Indirect** CONVICTIONS CHARACTERISED IN GENERAL AND EXAMINED IN DETAIL.

88.—13. **iudicia . . . iudicium . . . in iudicium**, v. Gloss. 17. 'Much as the case has been discussed, and long as it has been canvassed, to-day for the first time a defence has been set up.' *Ita* qualifies both *multum* and *diu*; *tam* is generally used with such words (denoting as it does the *extent* or *degree*, being a pronominal accus., while *ita* denotes the *manner*, being a pronominal abl.): but *ita* is here preferred owing to its *restrictive* force; cp. n. on § 49. For the general sense, and indeed expression of this passage, cp. *supra*, § 8. 19. **ista multa iudicia**: the ordinary idiom would require *ista tot iud.*, or *ista tam multa iud.*, or *ista plurima iud.* That is to say, the demonstr. pron. in combination with a subst., if it takes a descriptive adj. between the two, takes it sharpened by *tam* or in the superl. degree, or if the adj. be *multus* or *magnus*, changes it to *tot tantus* (or it may be *talis*). So § 123, illa acerbissima proscriptio. But exceptions are not unknown: *Sest.* § 106, illum foedum vultum; *ib.* § 116, illo ardenti tribunatu; *ib.* § 129, illa divina de me senatus consulta. Cp. *ib.* § 130; *Planc.* § 73, in illo tristi atque acerbo luctu atque discessu; Liv. xxi. 41, huic timendo hosti. And in this speech, § 143, istius invidiosi criminis; § 4, hac calamitosa fama;

§ 185, illam nefariam mulierem. We may say of all these adjectives (except the first, and perhaps *Planc.* § 73), that they are superlative in idea, or (in two instances) participial. Where the adj. is an integral part of the noun idea, this rule does not apply. Nor does it concern expressions such as *Verr.* i. § 36, hoc scelere nefario, § 30, hanc mortem repentinam, where the adj. stands outside. Here it is natural to take up in *ista multa iud.* the actual words of the objector, l. 13, *iud. permulta.* 21. **ruinae,** 'an avalanche' or a landslip : cp. the phrase 'trahere ruinam.' For the order of words, cp. n. on p. 1, l. 15.

89.—25. **magis . . . quam quod non faciatis** : untrue reason after *magis quam* expressed in subj. : cp. R. 1744, r. 740, with last ex. in each.

I. FIRST **iudicium** (§ 88 *init.*). C. JUNIUS TRIED FOR INFORMALITY IN HIS ACTION AS IUDEX QUAESTIONIS (§ 89, l. 28—§ 96).

XXXIII.—29. **illud** anticipates; v. n. on § 8. 30. **iudex quaestionis,** § 55, *quaesitor*, v. n. and ref. [Momms., *R. Staatsr.* ii. 572, pronounces this one of the most difficult to understand of Roman institutions.] This judgeship seems to have had its fixed place in the scale of official promotions: from § 79 (homo aedilicius, iam praetor opinione hominum constitutus) we should infer that it came between the aedileship and praetorship. Yet it was not a magistracy conferred by vote of the *comitia* : it is indeed distinguished from such magistracies. The *iud. quaestionis* must have been nominated by the praetor, who properly presided over his *quaestio* : or the office followed upon the aedileship in course, as a proconsulship did upon a consulship. It was of a year's duration. It is especially associated with the *quaestio de sicariis et veneficis*, one of the busiest courts during this period of social anarchy. Consult Ry. Introd. to this speech, § 9 ; Momms. *R. Staatsr.* ii.[2] 574, 575. 'So far was the tribune from making any allowance for the necessities of the action that he would not respect those of the law itself.' *Causae*, the case of his adversary : the praetor (according to Sylvius) allowed the defendant ten days' grace for getting it up. *Legi* (not '*law*' in the abstract, which would be *legibus*, but) the particular law which defined the rights of a *iudex quaestionis.* We need not (with P.) suppose a zeugma. By a forcible figure Cic. says 'not only did he show Junius no mercy, give him no tether : *he showed the law itself no mercy.*' It was not merely rigid interpretation of the law : it was its positive violation. Lemaire denies that there was any *lex* in the above sense : it was, he thinks, mere '*mos*' or habitual usage which ensured immunity from citation to the *iud. quaestionis.* He denies that the office was a magistracy in any sense of the word, and considers *legi* mere rhetoric. For **non modo** (non) cp. n. on § 9. 32. **Quo tempore . . . eo tempore** : this repetition of the antecedent with inversion of the cor-

relative clauses seems to be archaic, but is not very rare in Cic. Cp. § 104, qua lege . . . ea lege; in *Catil.* iii. § 15, quae religio . . . ea religione. (Draeg. *H. Synt.* ii. § 471, says that he has only found it *twice* in Cic.! but several times in *Cornif.*) Cp. n. on § 49. 33. **ad quaestionem**: ut de ipso quaesitore quaereretur.—MAN. **Page 35**, l. 1. **Voltus enim vestri** . . .: *enim* gives the reason, not for the question itself, but for his putting the question. Cp. § 70. The principle is the same as that noted on § 85, l. 18, latter part of n.

90.—3. **illa tandem quaestio** . . . **fuit**: attraction, v. n. on § 34. 5. **cui tum populo**: v. crit. n. 8. **circumvenerit**: cp. § 30, iudicio oppressum et circumventum innocentem; § 151, legem *ne quis iudicio circumveniretur* C. Gracchus tulit. 'Compassed the ruin of an innocent man.' **hac lege**, the 'Lex Cornelia de sicariis et veneficis,' which contained a clause referring to judicial murder, or the compassing by corrupt means of the conviction of an innocent man. Ry. *Rom. Ant.* p. 305. The *quaestio* over which Junius presided administered this law. V. n. on *iudex quaestionis*, p. 34, l. 30. 9. **accusatum oportuit**: the verbs *volo*, *nolo*, *cupio*, *oportet* occasionally take (especially in the comic poets and Cic.) the perf. pass. part. instead of the pres. inf. construction (the auxiliary *esse* being omitted). Cp. § 129, factum esse oportuit, with note: also *Pl. Curc.* 304, te conventum cupit; Ter. *Andr.* 239, nonne prius communicatum oportuit? **At ipse ea quaerebat**: the argument that Junius would have had to be summoned before his own tribunal may seem inconsistent with the fact that there may have been as many as three *iudices quaestionis* presiding over the quaestio inter sicarios (as in this year Q. Voconius Naso, M. Plaetorius, C. Flaminius; v. § 147). Mommsen's hypothesis, that different iudices administered different *sections* of the lex Cornelia in this court may remove the difficulty.—*Röm. Staatsr.* ii.[2] 574 a, 3. 10. **exspectasset**, not '*could* have waited,' but 'ought to have waited.' Quinctius ought to have waited a few days: then he might have prosecuted under the lex Cornelia. Cp. note on *rescinderent*, § 60. *Exspectasset=exspectare debuit.* There are two explanations of this use of the imperf. and pluperf. subj. (not unfrequent in Cic. and in the comic poets), which expresses 'non id quod fieret factumve esset sed quod fieri debuerit.' (*a*) It is the apodosis to a suppressed protasis—'si quod debuit fecisset.' So Mr. Reid takes it, *Sull.* § 25, si ceteris patriciis me et vos peregrinos videri oporteret, a Torquato tamen hoc vitium sileretur, supplying *si caperet.* (*b*) The force of *obligation* is conveyed in the mood itself. It is indeed too express to be explained as a *nuance* or variety of the potential subj. It stands in its own right, with the *jussive* subj. and the *dubitative* or deliberative subj. (subj. interrogative of a command)—part of the original inheritance of Indo-European syntax, we may believe.[1] (Though the Lat. subj. is syncretistic, *i.e.*

[1] Cp. Delbrück on μή with Subj. of Will, *Synt. Forsch.* iv. p. 118. The imperative subj. in Greek is almost lost. Yet v. Soph. *Phil.* 300.

partly subj. in form, partly opt., analogy has unified the syntactic usage of its tenses.) This Ciceronian usage strikes us indeed as a *survival*: Madv. *de Fin.* ii. 36 gives no post-Ciceronian prose ex. but Liv. xlv. 37. 4. It is noticeable also that it is negatived by *ne*, not *non*: *Att.* ii. 1. 3, aut ne poposcisses. Hence Pl. *Trin.* 133, non ego illi argentum redderem? *Non redderes* is anomalous. To this Mr. Reid can only say that in *early* Latin *ne* is equivalent to *non*. The plup. differs from the imperf. as *debuit* does from *debebat*. The following exx. illustrate this use: Verg. *A.* iv. 678, sprevisti moriens? eadem me ad fata vocasses; *ib.* viii. 643, at tu dictis, Albane, maneres; *Sest.* § 45, forsitan nonnemo vir fortis . . . dixerit restitisses, repugnasses, mortem pugnans oppetisses. Cp. Liv. l.c. sub § 60, l. 7. This subj. is treated in much the same way by R. 1604, r. 670; Madv. § 351, obs. 4; Zumpt, § 529 n.; Kühner ii. I. p. 141. Madv. *de Fin.* ii. § 36 is a repertory of exx. V. also Mayor, Cic. *N. D.* iii. § 76. It is frequently parallel (as here) to debuit, oportuit, debebat, oportebat, with inf., and is thus defined by the context as not being simply potential. If it were, it is not clear why it never expresses *possibility* as well as obligation. 12. **potestate**: cp. § 79, l. 1.

91.—13. **Multam petivit**: doubtless this was one of those cases in which, as the offence touched the commonwealth seriously, an indictment could be brought only by a magistrate (as representing the State), and in which the fine was fixed by statute. Momms. *Röm. Staatsr.* i.[2] 178 n. 5. (But this was not a prosecution under the lex Cornelia de sicariis, as it is there implied.) 14. Like the ordinary magistrate, the *iudex quaestionis* had to take an official oath within five days after his assumption of office; though, unlike the juror's oath, it was a mere formality, as we gather from this passage and *Verr.* i. § 32, hoc animo sum ut eo iudice quam *praetore* hanc rem transigi malim et iurato suam quam *iniurato* aliorum tabellas committere; in the latter of which the praetor is called *iniuratus*, as far as this same oath is concerned. Cp. also n. on § 121, *iurati*. [Ry., however, may be right in supposing the oath of the *iud. quaestionis* (as *distinguished* from the praetor) to have been more than the ordinary official oath—an oath that he would administer justice according to the special law under which the trial was held. The sing. *legem* makes for this view. Cp. *Sest.* § 37, of Metellus refusing to swear to the lex Appuleia, cum unus in legem per vim latam iurare noluerat, which App. b. civ. i. 29 explains, *ἐπομόσαι πεισθήσεσθαι τῷ νόμῳ*.] V. Momms. *Röm. Staatsr.* i.[2] 598. **quod in legem non iurasset**: it has been observed that the action of Quinctius on this occasion seems to prove that the *ius accusandi apud plebem* was one of the privileges withdrawn from the tribunes by the Sullan legislation. Had it not been so, probably Quinctius would not have hesitated to impeach Junius on the direct charge of 'judicial murder' (*hac lege*) before the *comitia* (not before the appropriate *quaestio*): the objection 'at ipse ea lege quaerebat' would not, of course, have applied in that case (Fritzsche, *die Sullan.*

Gesetzgebung, Essen, 1882, p. 9). **fraudi esse**, a legal and archaic phrase 'to damage.' R. pref. to Book iv. p. xliv, r. 482 a. 15. With similar irony Verres is addressed (*Verr.* ii. 1. 100) as *homo castissimus*. 16. **subsortitionem**: the jury on a criminal trial were appointed by lot, and this process was termed *sortitio*: when a vacancy, from any cause, occurred in a *consilium*, the place was filled up by a fresh drawing of lots, and this process was termed *subsortitio*.—Ry. The vacancies (according to MAN.) were made by the *reiectio* of prosecutor and defendant: but this is unlikely: certainly the case of Fidiculanius Falcula, who was *not* present from the beginning of the trial, was not of this kind. **eius**, made by Junius: **eo**, that of Verres. Contrast with this passage *Verr.* ii. 1. 157, 158, where Cic. refers to *subsortitio illa Iuniana iudicum* as a notorious case of corrupt procedure, in which the praetor Verres was in league with the *iud. quaestionis* Junius, and afterwards falsified his register, fearing to share the fate of the latter—multos ex te viros primarios audisse cum diceres ignosci tibi oportere quod falsum codicem protuleris; nam qua invidia C. Iunius conflagravit, ea, nisi providisses, tibi ipsi tum pereundum fuisset. **interlitus**, 'full of erasures': *Verr.* l.c. explains the process: 'referendo in tabulas . . . quod gestum non esset, tollendo quod esset et semper aliquid demendo mutando interpolando.' The clause is added to show that the evidence of Verres' register was worthless.

XXXIV. **92.**—22. **aliquam**: v. crit. n. 23. **si . . . erat**: for the indicatives cp. § 85, in hoc si improbus Cethegus fuit. **non**, thus used without a verb in an answer is very rare in classical prose: *Caec.* § 33, quid? hoc Verre praetore factum est solum? *non*, sed etiam quaestore Caecilio. It often occurs in the comic poets, and must have been colloquially much used. The alternative form of denial is that of Ter. *Ad.* iv. 2. 30, sed estne frater intus? *Non est.* So too of words for 'yes,' such as *ita* and *vero*. In Greek, too, *οὔ* and *ναί* are much less common in the literary language than their equivalents in modern languages. This is due partly to the wealth of the classical languages in particles, partly perhaps to the tendency of the Greek mind to finesse and irony, and its avoidance of all that is blunt in expression. 27. **illud iudicium fuisse**, 'that his (Junius') trial was one worthy the name.' Below (l. 29) *illud iudicium* is Oppianicus' trial, the 'iudicium Iunianum.' 30. **ratio illius iudicii**, the 'motive' of the trial of Junius. P. compares (from Demosth.) *ἡ τοῦ ἀγῶνος προαίρεσις*. V. Gloss.

93.—**Page 36**, l. 3. **contiones**: cp. *Verr.* i. § 2, nunc in ipso discrimine ordinis iudiciorumque vestrorum cum sint parati qui contionibus et legibus hanc invidiam senatus inflammare conentur: referring to the agitation against senatorial juries of which that against the *iud. Iunianum* formed a part. 4. **Accusabat**, equivalent to *multam petivit*, § 91. 5. **subsellia**, iudicum, MAN. 6. **Gradus illi Aurelii tum novi**, in the Forum Romanum: probably the orator would point to them as he spoke. Cp. *Flacc.*

§ 66. 'We hear of a Tribunal Aurelium in *Sest.* § 34, servorum delectus habebatur pro Tribunali Aurelio: and the *Gradus Aurelii* are supposed to have been a flight of steps leading up to the elevated platform of the Tribunal. It has been conjectured from the expression *tum novi* that the whole structure was the work of M. Aurelius Cotta, consul with L. Licinius Lucullus in 74 B.C.'—Ry. 7. **theatro**, perhaps suggested by the word *gradus*, which sometimes denotes the tiers of seats in a theatre or amphitheatre. 9. **ab reo**: cp. § 9, a Cluentio, with n.

94.—10. **collegam meum**: he presided as *praetor* in the *quaestio de peculatu*, § 147. 11. **locus . . . non est constitutus**, *i.e.* the Iudices refused to place the cause upon the roll for trial (Ry.). It is evident from this passage and §§ 56, 59 that the *iudices* of any *quaestio* could take the cases which were to be tried in what order they pleased, and could also (as an English Grand Jury) refuse to entertain a charge. Also from the *Div. in Caec.* we know that such a jury (unsworn) had sometimes to decide between two claimants for the office of accuser. (V. Ry.'s note.) L. Cornelius Sulla Faustus was the son of the dictator, to whom his colossal fortune (supposed to have been acquired by the appropriation of public moneys) had passed. Among the personal attacks which attended the democratic reaction from the Sullan constitution (dating from B.C. 70—the restoration of the tribunician power in its entirety), those made on Faustus Sulla were the most persistent. V. Momms. iv. 2, pp. 160, 161; Ry. on this passage. So *leg. agr.* i. § 12 (spoken B.C. 63) of the golden dreams of the agrarian commissioners: 'maximam pecuniam se a Fausto ablaturos arbitrantur: quam causam suscipere iurati iudices noluerunt, hanc isti decemviri suscepere.' Such an action had been unsuccessfully brought against Sulla in the year of this speech. Cicero was adverse to it: fr. of *pro Cornel.* i. quam ego causam [de Sullae bonis] . . . praetor in contione defendi, cum id dicerem quod eidem iudices postea statuerunt, iudicium aequiore tempore fieri oportere. 11. **de pecuniis residuis** = ut pecuniae publicae, quae residuae apud quemque essent, exigerentur (Ascon. on *Cornel.* i. l.c.). Such charges were originally preferred under the statute *de peculatu*. But in the last century of the Republic a distinction was drawn between *misappropriation* of public money (pecuniam avertere, in rem suam vertere), and *neglect* to disburse for the public service all the money assigned. *Pecuniae residuae* is that which is over (*residet*) and is not expended for the state: lege Julia de residuis tenetur qui pecuniam publicam delegatam in usum aliquem retinuit neque in eum consumpsit (Digest, xlviii. 13. l. 2). The action was in our case to recover arrears of public money left in the hands of Sulla. V. Ry. *Rom. Ant.* p. 308. 12. **exlegem**, 'above the law,' *lege solutum* as opposed to *legibus teneri*: in Hor. *A. P.* 224,

Spectator, functusque sacris et potus et exlex,

the word means ready to 'defy the law.' 13. **contemptam atque abiectam**: the perf. part. pass. sometimes has the force of a verbal adj. in

-bilis: *Verr.* ii. 3. 98, ne contemptissimi ac despicatissimi esse videamur. Such participles are frequently in this sense compounded with *in-*, as *invictus*, *indomitus*, *inaccessos* lucos (Verg. *A*. vii. 12). So the Greek verbals in *-τός* acquire the notion of possibility: and a few perf. pass. participles: Hom. *Il.* xiv. 196, εἰ τετελεσμένον ἔσται. A thing once done may be done again. **putarent . . . putarunt**: the change of mood is instructive, cp. § 89, l. 26; R. 1744, tenth ex., r. 740, 2, fifth ex. 17. **cognatis, adfinibus**, 'relations by blood,' 'connections by marriage'; v. Ry. *Rom. Ant.* pp. 265, 267. In such context as this **necessarii** means 'intimate friends' who are not connected with a man by ties of blood or marriage. Cp. its use in § 43, suorum municipum ceterorumque necessariorum; so in § 87. But it may be applied to a relation, *Muren.* § 73, virgo Vestalis huius propinqua et necessaria. The same holds as to *necessitudo*: in § 117 it denotes 'intimate friendship,' in § 199 the 'ties of marriage.' 21. **criminosus**, 'scurrilous,' 'litigious': in a bad sense, as Hor. *C.* i. 16. 2: quem criminosis cunque voles modum | pones iambis.

XXXV. 95.—30. **conflata**, 'when prejudice is blown into a flame and public meetings are worked up to disloyalty' (not as P., who takes *conflata* in agreement with *vis*). For this sense of *conflata* v. n. on § 9. 32. **iactatione populari**, not, as Sylv., 'by a popular disturbance,' but 'bidding for popularity,' 'posing as the *people's friend*.' The verbal phrase is *se iactare*. So *Sest.* § 114, ita se in populari ratione iactarat; Verg. *A*. vi. 816, 817, iactantior Ancus | nunc quoque iam nimium fidens popularibus auris. Graev. compares *ad Fam.* viii. 10, Curionem video se dupliciter iactaturum, 'will curry favour (with the optimates) in two ways.' Juv. i. 62, ipse lacernatae cum se iactaret amicae. **Page 37**, l. 1. **P. Popilius**, consul B.C. 132, presided over the prosecutions of Tib. Gracchus' adherents; went into exile when C. Gracchus passed his law *de provocatione*, which was made retrospective; was recalled by the tribune L. Calpurnius Bestia in B.C. 121 after C. Gracchus' death. Momms. iii. pp. 95, 118, 132. **Q. Caecilius Metellus Numidicus**, who won his agnomen in the Jugurthine war, was more than once marked out for attack by the democratic tribune L. Appuleius Saturninus: alone of the senators he refused to take the oath to observe the leges Appuleiae, and went into exile in consequence. Momms. iii. pp. 207, 211. Cp. also § 24, n. 2. **his temporibus . . .**: abl. of circumstance. R. 1242, r. 504, 1. Cp. Pl. *Trin.* ii. 4. 83, cena hac annonast sine sacris hereditas, 'with our present prices a dinner is an unencumbered inheritance.'—'In our degenerate day, with such morals and such magistrates.' 3. **sine . . . ac sine . . .**: for the repetition of the preposition with a synonymous phrase, and its attachment by *ac*, cp. § 3, sine vestro ac sine talium virorum subsidio: ubi v. n. These words contain the condition upon which *possimus* depends. 'If it were not for your wisdom and the salutary action of the law-courts we could not be safe.' R. 1534, r. 642. Or *possimus* depends on *nedum*: R. 1658, r. 688.

96.—4. **illud iudicium**, the trial of Junius. 5. **non modus . . . defensa**: cp. § 89, non modo causae, sed nec legi quidem quicquam per trib. plebis laxamenti datum est. For this sense of **mos**, 'precedent,' 'usage,' cp. *Verr.* ii. 4. 113, ut morem veterem Hennensium conservarent, explained below by the words 'quoniam haec a maioribus instituta accepissent.' For *modus*, 'reasonable limits,' cp. the phrase *sine modo modestiaque.* 7. **vis illa fuit**: for the attraction, cp. § 34, n. *Illa* = 'the then proceedings': cp. *Sest.* § 73, vim fuisse illam, flammam quassatae reip.: 'It was sheer violence, a cataclysm or hurricane, anything you will, rather than a trial or deliberate examination or inquiry.' 10. **his rebus . . . standum**: cp. § 132, censoris opinione standum, with n. 13. **iudicem**: for sing. cp. crit. n. 14. **ratio**; v. Gloss.

II. Second **iudicium** (§ 97): Bulbus tried for *Maiestas.*

97.—15. **at enim at . . . at . . .**: § 83, n. 16. **maiestatis** = *maiestatis minutae.* 'You should add, for treason.' 'Maiestatem minuere est de dignitate aut amplitudine aut potestate populi aut eorum quibus populus potestatem dederit aliquid derogare (Cic. *de Inv.* ii. 17). Offences against the Emperor were afterwards brought under the last clause, which was extended by Tiberius to cover *dicta* as well as *facta* (Tac. *Ann.* i. 72). V. Ry. *Ant.* pp. 302, 303. For the gen. of the *charge* cp. § 32, rei capitalis damnatam: R. 1324, r. 527: *de* with abl. is sometimes used, cp. § 116, reo damnato de pecuniis repetundis: also the abl. crimine, actione (and sometimes scelere), R. 1229. The *penalty* is expressed by the locative, as damnatus octupli: the genitives *capitis*, *pecuniae*, *Capitalis poenae*: the abl., capite damnatus. We have poetical applications of these constructions in *voti reus*, Verg. *A.* v. 237; damnatusque longi | Sisyphus Aeolides laboris, Hor. *C.* ii. 14. 19. The crime, the charge, and the penalty are liable to be confused with one another: in *voti reus* it is hard to say which idea the gen. denotes; probably the last. *Morti damnatus* is probably an instance of the abl. construction. R. 1200, 1199, 1325; r. 494, 495. 16. **hoc iud.**, the trial of Bulbus. 17. **cum illo**, with that of Opp.: **hoc illi c. o.**, 'his connection with the latter trial was made a charge against him.' 19. **C. Cosconius**, probably the C. Cosconius Calidianus of *Brut.* § 242, 'qui nullo acumine eam tamen verborum copiam, si quam habebat, praebebat populo cum multa concursatione magnoque clamore.' 22. **ista divinatio est**: n. on § 96. **divinatio**, 'sheer guesswork'; sometimes coupled with **coniectura**, which, however, describes something less haphazard: cp. § 20, n. For the juristic sense of *divinatio* (a preliminary action which decided between the claims of two or more persons to prosecute), cp. n. on § 94 l. 11. The *speech* itself which Cic. delivered at such an action preliminary to the trial of Verres is known as the *divinatio in Caecilium.* Ry. *Rom. Ant.*, p. 295. 23. **vide ne . . .**, 'Perhaps you will find that . . .'; *Phil.* ii. § 35, vide, quaeso, ne haereas, 'I am afraid you may

find (the question) embarrassing' (Mayor). R. 1656, I. 686. 26. **mihi**: cp. § 114, quid . . . mihi damnatos ambitus colligitis? with n.

III. Third **iudicium**: Popilius and Gutta tried for *Ambitus*.

XXXVI. 98.—31. **P. Popili**: of course a different person from the Popilius of § 95. 32. V. crit. n. The argument is far from clear: possibly Cic. intended it so. Prof. Nettleship's suggestion (*quia acc.* for *qui acc.*, l. 32) would simplify matters: the accumulation of relatives here is unpleasant. Also it seems to gain support from Quint. v. 10. 108; Cicero pro Cluentio P. Popilium et Ti. Guttam dicit non iudicii corrupti sed ambitus esse damnatos: *quid signi?* quod accusatores eorum qui erant ipsi ambitus damnati, e lege sint post hanc victoriam restituti: 'They were condemned not for tampering with *iudices*, but for *ambitus*, *because* their accusers, who had themselves been condemned for ambitus, were subsequently restored to their civil rights.' This is further explained by what Modestinus (in *Digest* 48. 14. 2) says on the Lex Julia de ambitu —'qua lege damnatus, si alium convicerit, in integrum restituitur: non tamen pecuniam recipit.' No such 'praemia legis' were offered under the *lex de sicariis* or the *lex repetundarum* (under which alone the offence of taking a bribe as a juror could be indicted). *Therefore* they were indicted for *ambitus*, an entirely distinct offence: cp. n. on § 114. (But Cic. chooses to ignore the fact that at Rome, while a man might be prosecuted under one *lex*, offences contravening another *lex* might bring about his condemnation.) V. Prof. Nettleship, *Essays in Lat. Lit.* pp. 79, 80, 81. 33. **ambitus**, 'corrupt practices' at an election: an offence dealt with by a series of laws, the most stringent being the lex Calpurnia of B.C. 67, which doomed the convicted briber to perpetual exclusion from the senate and all public office. Thus when Cic. speaks here of a *restitutio in integrum* he refers to the state of the law before B.C. 67. (Mr. Reid, introd. to *pro Sull.* pp. 10, 11; Ry. *Rom. Ant.* 308, 309.) As to the word *ambitus*, cp. n. on *ambitio*, § 76. Page 38, l. 1. **in integrum**: v. Gloss. *integer*. 3. **reprehendissent**, 'had brought others to a reckoning upon the same charge to which they themselves had succumbed.' For *offendissent* v. Glossary. **Reprehendissent**, 'had publicly shown their disapproval,' Prof. Nettleship explains (*Essays*, p. 81); comparing *Font.* § 3, atqui homines si qui [tenentur] hoc genere quaestionis, accusatos et reprehensos videmus primum testibus. The metaphor is similar to that in *offendo*: 'to pull up,' 'to hold a person back as he is stumbling or making off': *Acad.* ii. § 139, revocat virtus vel potius reprehendit manu.

IV. Fourth **iudicium**: Staienus tried for *Maiestas*.

99.—7. **quid, quod**, an elliptic formula of transition (*quid dicam de eo quod . . .*), 'what am I to say of the fact that . . .' 'what of the con-

viction of Staienus?' **Non dico** . . ., a common form of *occupatio*—*i.e.* the implied assertion of a thing by the expression of an intention of passing it over. *Cornif.* iv. § 37 calls it *occultatio*: 'quom dicimus nos praeterire aut non scire aut nolle dicere id, quod nunc maxime dicimus.' (Mark Antony's funeral-speech in Shakesp. *Jul. Caesar* affords repeated instances of this device, employed to rouse the dormant passions of the citizens :

> 'O masters, if I were disposed to stir
> Your hearts and minds to mutiny and rage,
> I should do Brutus wrong, and Cassius wrong . . .
> I will not do them wrong. . . .
> But here's a parchment with the seal of Caesar . . .
> Which, pardon me, I do not mean to read.'

8. **nescio an**, 'I almost think,' in Cic. a modest affirmation. *An* introduces the second member of a disjunctive interrogation. Pl. *Rud.* i. 2. 16 gives the original form of such questions : utrum tu masne an femina es? '*Which of the two* [is true]? are you male or female?' Then for the first member *utrum* alone became the interrogative particle, answering to *an*, or *-ne* alone was used, or no particle at all : or *the first member is wanting altogether.* In this last case the expressed member (with *an*) has a tone of irony or wonder which a simple question with *-ne* would lack. Here (*a*) cp. § 136, an potuit rem delatam eiusmodi repudiare? (with n.) 'Do you mean to say that it could have refused?' As a general rule, a negative answer to the question (as asked) is expected : *an*=*num*. (*b*) But sometimes not : v. § 65, quid tacetis? an negare non potestis quod repetistis? *de Off.* i. § 48, quidnam officio provocati facere debemus? an imitari agros fertiles, qui multo plus efferunt quam acceperunt? This=num quid aliud f. debemus an imitari . . . ? Thus *an* almost=*nonne*. The single *an*-clause, *dependent*, answers in character to (*b*). When governed by *nescio*, *dubito*, and the like, the *expressed* alternative with *an* is that to which the speaker *inclines* : *ad Att.* ii. 6. 1, qui etiam dubitem an hic Antii considam, 'why, I actually consider whether it would not be well to settle down here at A.' Cp. R. 2254-2256, r. 887, 888; notes on § 65, § 136. 11. **Mam. Aemilio** : v. crit. n. **praefecti** (socium) : these were Roman officers nominated by the consuls to command the contingent of allies in the combined army of Romans and allies. In a *corps d'armée* of two legions, the allies (falling into two divisions, the *ala dextra* and *ala sinistra*) would be commanded by six *praefecti*. (The allies had their own officers besides.) [Marquardt, *Röm. Staatsverw.* ii. p. 396.] They answer to the **tribuni militares** of the Roman contingent, who in the case supposed would be twelve in number. 15. **nomine iud. Safin.**: cp. § 68 *supr.* for the circumstances. *nomine*, 'on account for,' 'under the head of': *nomen*, properly the debtor's name entered in a ledger ; so 'an entry,' 'a debt,' in such phrases

as *nomina exigere*, 'to call in one's debts': Hor. *S.* i. 2. 16, nomina sectatur modo sumpta veste virili . . . tironum, of an avaricious usurer.

100.—18. **illo iudicio**: the abl. of *place where* may be used without a preposition occasionally (though far commoner in post-classical than in classical prose Latin) when it has an attribute, even though only a pronominal one, as here. (We find the same qualification in the case of the abl. of quality, of manner, and of time when.) So Sall. *Jug.* 79, pleraque Africa; *Verr.* ii. 2. 44, ceteras dicas omnis *illo foro* M. Postumius quaestor sortitus est. *Without* an attribute it is only used in the case of certain proper names, and of a few stereotyped local expressions, such as *terra*, *mari*, *via*, *loco*: v. R. 1170 *sqq.*, r. 486 *sqq.* 19. **P. Cominius**: thus noticed, *Brut.* § 271, P. Com. Spoletinum, quo accusante defendi C. Cornelium, in quo et compositum dicendi genus et acre et expeditum fuit. We have a few fragments of Cicero's speech there referred to; according to Asconius (argumentum in or. *pro C. Cornelio*) the two Cominii prosecuted Cornelius for *maiestas*, 'detulit nomen Publius, subcripsit Caius': and the speech of P. Cominius, extant in his day, was worth reading. 23. **conciliandae gratiae**, § 84 *ad init.*

101.—25. **persona**: v. Gloss. We have the converse phrase in *Caec.* § 14, quam personam iam e cotidiana vita cognoscitis . . . mulierum adsentatoris . . . hanc personam imponite Aebutio. 26. **ad Iuturnae**: the ellipse as in Horace's 'ventum erat ad Vestae.' An Italian goddess, sister of Turnus, to whom springs were sacred, especially the spring Iuturna, near the Numicus, from which water was brought to Rome for sacrificial purposes; *nympha decus fluviorum*, Verg. *A.* xii. 142. Q. Lutatius Catulus first built here a temple near the Aqua Virgo in the Campus Martius (Serv. Verg. *A.* xii. 139; also Ov. *Fasti*, i. 463, quoted by Ry.: Te quoque lux eadem, Turni soror, aede recepit, | hic ubi Virginea campus obitur aqua). 27. **Exagitabantur . . . probabatur**: a very artistic sentence. The arrangement of the first two members (*exag. . . . fallaciae*, *tota . . . aperiebatur*) is chiastic: then follows anaphora (the symmetrical arrangement of words in positions exactly corresponding; here in the sequence *subst.*, *attribute*, *verb*). Cp. n. on § 83, l. 26. **Exagitabantur**, 'were ferreted out.' A hunting metaphor, which appears in the use of *agito*, 'to hunt down,' § 82. (In §§ 4, 88, however, it has the meaning 'to discuss,' 'turn over.') So *de Off.* iii. § 68, tendere plagas etiam si excitaturus non sis nec agitaturus, 'though you do not intend either to start the quarry from its lair or to hunt it;' *ad Att.* i. 16. 8, insectandis exagitandisque nummariis iudicibus. *Exagito = excito*, 'to hunt out.' V. Gloss. *agito.* 28. **ratione**: v. Gloss. 29. **in medium**: n. on § 77, l. 10. 30. **interpres**: v. Gloss. and refer to *ad Att.* l.c. on l. 27 *supr.* **probabatur**: v. Gloss.

102.—**Quam ob rem . . . confirmet**; Cicero's argument again takes refuge in sonorous obscurity. To apprehend it we must notice that **cum ita . . . Oppianicus** is a parenthesis, and relates to what follows, not what

precedes it. The protasis of the sentence (**si . . . ablata est**) consists of two arguments, both dependent on **si**, the first giving the prior condition, the second the later condition which clenches it—the first gives indirect, the second direct, proof of the guilt of Opp. The sentence may thus be summarised: (i.) The verdict against Staienus (indirectly) asserted Opp.'s guilt (and you must remember that we agreed that *either* Cluentius *or* Opp. must have bribed); (ii.) and while I defy you to prove anything against Cluentius, there is direct evidence of a damning kind against Opp.—his recovery of bribe-money from Staienus by law. *Therefore* Staienus' condemnation, far from telling *against* Cluent., is strong evidence *for* him. The parts of the protasis are related to the conclusion in the same way as they would be if *si* were repeated before *cum*: cp. n. on § 6, l. 30. The sentences *Cluenti . . . reperietur*, *Oppianici . . . ablata est* are in an *adversative* asyndeton (the unexpressed connection is '*but*,' not '*and*'). In Greek we should have μέν and δέ. On the worth of the latter of the two arguments cp. n. on § 64. **Page 39**, l. 5. **post iudicium**, sc. Oppianici: cp. § 78.

XXXVII. **103**.—9. **video**, 'I find': cp. § 119, n. 12. **si . . . appellet . . . confiteatur necesse est**: the form of the conditional sentence is irregular: in the apodosis the assertion of necessity is made independently of the condition (*n. est* instead of *n. sit*). The form for an *imaginary* condition is preferred because the condition *si appellet* has in effect just been negatived—*potius quam iud. appellandum putem*. Cp. *div. in Caec.* § 21, cur nolint, etiam si taceant, satis dicunt: verum non tacent. R. 1574 (1), r. 654 (1); Madv. 348, 361, obs. 2. [I consider *si appellet* to qualify *confiteatur* (R. 1778), *necesse est* being as it were over the whole conditional sentence, both apodosis and protasis.—H. J. R.] 15. **Bulbi**, sc. *iudicium*. Beware of supplying *illud* as the English 'that of Bulbus.' The demonstr. pron. cannot be used as the Greek article, either with a gen. (τὸ τοῦ δεῖνος) or with a part. (*illi iudicantes* = ἐκεῖνοι δικάζοντες, not οἱ δικάζοντες). Bradl. Arn. § 73. When (about the 5th cent. A.D.) the six cases of Latin were reduced to two, the demonstrative force of *ille* was weakened: it became an article: *e.g.* 'dicebat *ille* teloneus de *illo* mercado ad *illos* necuciantes' (7th cent.), 'the custom-house officer spoke about the merchandise to the traders.' Hence the French *le*, *la*, *les* (Brachet, *Hist. Fr. Gramm.* lib. ii. pt. i. ch. 2).

V. FIFTH **iudicium**: FIDICULANIUS FALCULA TRIED FIRST FOR INFORMALITY IN TAKING HIS SEAT ON THE JURY: THEN UNDER THE *lex repetundarum*.

18. V. Introduction (iii. § 12) for a passage from an earlier speech, the *pro Caecina*, which gives the facts an entirely different complexion. 19. **cum praesertim**, 'and that though.' The original meaning is 'especially since,' ἄλλως τε καὶ ὅτι. In cases like this a *reason* is given,

not for the *fact* stated (*condemnarat*) but for the *fact of its statement* as something noteworthy (*eum condemnavisse velim animadvertatis*). It is an instance of the principle of substitution noticed upon § 85, l. 17. For this acquired meaning of *praesertim cum* or *cum praesertim* cp. Mayor's n. on *Phil.* ii. § 60, who quotes Madv. (*de Fin.* ii. § 25): saepissime *cum praesertim* et *pr. cum* (nullo, quod animadverterim, discrimine) et *qui praesertim* eandem vim habent ac si dicas: *idque cum tamen*, *quamvis*, *qui tamen*. 22. **contionibus**, 'public meetings,' v. Gloss. An instrumental abl. 24. **non suae decuriae munere**, 'usurping a duty which did not belong to his decury.' The exact significance of this last expression during the period here in question, B.C. 81 to B.C. 70 (from the lex Cornelia iudiciaria to the lex Aurelia), is not very certain. The *album iudicum* or list of jurymen to serve throughout the year in the different courts would seem from B.C. 70 onwards to have been made out by the praetor *urbanus* from the three orders (senators, knights, tribuni aerarii), each of the three forming a *decuria*. (Augustus added a fourth, the *ducenarii*; cp. n. on § 121, l. 12.) But during this preceding period, senators alone being competent to serve, the roll of the senate was itself a list of jurymen, magistrates in office being excepted. Then comes the question, What were the *decuriae*? (i.) Some explain them as subdivisions of the senate, consulares, praetorii, and the other ex-magistrates (Zumpt, *de leg. iudic. repet.* p. 37), referring to *Verr.* ii. 2. 79, hic alteram decuriam senatoriam iudex obtinebit? But this is slender evidence. Madvig however accepts the inference from the passage (*Verfass.* ii. p. 225). (ii.) It is more probable that each *decury* was at this time a division of jurors which served in *one* particular court or *quaestio*: *Verr.* i. § 16, in sortitione istius spem fortuna populi Romani et in reiciendis iudicibus mea diligentia istorum impudentiam vicerat: 'in the balloting for the decury which was to try Verres' case Rome's fortune had triumphed over his hopes,' etc. The Schol. Gronov. explains this passage thus: per decurias erat senatus divisus; unam decuriam praetor dabat, ut ex hac iudices reicerentur. Ergo fortuna populi Romani fecit, ut ea decuria daretur a praetore, quae paucos habuit malos; mea autem diligentia fecit ut meliores eligerentur.—Fidiculanius Falcula had broken the law in two points: (*a*) though not belonging to the decury which was to serve in the *quaestio de veneficis*, he had allowed himself to be placed upon a jury in that court; (*b*) he had served, his name not being entered in the praetor's register. V. § 91. In regard to this question I am mainly indebted to an article of W. Wilmanns—*Ueber die Gerichtshöfe während des Bestehens der Lex Cornelia iudiciaria*, *Museum für Philolog.* xix. 1864: also Momms. *Röm. Staatsr.* ii. pp. 220, 221. V. Ry. *Rom. Ant.* p. 294 and Ry.'s note here. 27. **prima actione**, § 55, l. 5 n. 28. **Non numero . . . fuit**: this passage is corrupt. V. crit. n. for its general sense, and the emendations suggested: one of which has been adopted in this text. 29. 'Though he did not incur that particular fine,' *i.e.* 'though he was not guilty of

that particular offence.' [**Committere** is 'to bring to issue' or 'effect,' and hence equally applicable to crime or its punishment. So we say, 'incur a punishment,' and 'incur a fault.'—H. J. R.] The same interchange of application appears in Greek in such phrases as ὀφλεῖν δειλίαν, 'to owe a judicial fine for,' *i.e.* 'be found guilty of cowardice.' For this absolute use of **accepisse** = *acc. pecuniam*, cp. § 113, quis accepit? 31. **eius**, of the court which tried Staienus for maiestas.

104.—32. With what Cic. says here of the second trial of Fidiculanius Falcula for having taken a bribe from Cluent. we must contrast what he said in the *pro Caec.* § 29. He is disparaging the value of Falcula's evidence. When he gave it, he was asked how many miles (*quot millia*) Caecina's farm lay from Rome: and on his replying, *minus* IↃↃↃ, 'less than 50 miles,' with a roar of laughter the audience cried '*ipsa esse*,' 'the exact figure!' 'For they remembered,' Cic. says, 'how much he had received in the iudicium Albianum.' 33. **Qua lege . . . a senatore ratio repeti solet**: this seems to imply that only senators were liable under the lex [Cornelia] de repetundis, the existing statute on the matter. So also the words at the beginning of § 148, where Cic. says that if T. Accius (an *eques*, v. n. on § 62) were impeached under this law he would protest 'se lege pecuniarum repetundarum non teneri.' (It is in fact stated in *Rab. Post.* § 12 that the lex Julia de pecun. repet. did not apply to the Equites.) But this certainly does not hold in regard to the WHOLE *lex de repetundis*: *Verr.* ii. 2. 77 notices the fact that a **non-senatorial** defendant could only challenge three *iudices*. It is therefore not unlikely that, as Mr. Peterson conjectures (n. on § 98), the application of *those sections* of the law de repetundis which related to judicial corruption (which seem to appear first in the lex Cornelia *de repet.* of Sulla, B.C. 81) was confined to senators, which would be analogous to the similar limitation in the case of the sixth chapter of the lex Cornelia *de sicariis* (v. *infr.* ch. liv.). When the leges Corneliae were passed all iudices were senators: but while the lex Aurelia of B.C. 70 extended the privilege of judging to other orders, the responsibility for judicial action was (by a survival, and now an anomaly) still limited to **senators**. Cp. n. on § 148.[1]

[1] Zumpt's view somewhat differs from this. He holds that the lex Julia connects immediately with the lex Calpurnia of B.C. 149: that intermediate laws dealt with *repetundae* not by itself but only in connection with other official offences: that down to the time of the lex Aurelia of B.C. 70 there was a recognised distinction, acknowledged by Sulla, between *official* offences and ordinary offences, and a distinct procedure for each. Thus the persons liable under the lex Cornelia de repetundis must have been (*a*) all senatorial officers, (*b*) all senators, (*c*) certain officials whose office was the first step to promotion. But the lex Julia of Caesar included not only senators and senatorial officers, but also other persons who exercised a share of the state-control. As to *Rab. Post.* § 12, he compares *ib.* § 19, Postumo . . . qui nec tribunus nec praefectus nec ex Italia comes nec familiaris Gabinii: these words *themselves* cannot have stood in the lex Julia: Pompeius had in vain proposed to introduce them (§ 13). But some vague expression (such as *cohors*), under which even the knight Postumus might have been brought, must have stood there. The frr. of the lex Acilia repetundarum support this view—that *officials*, senatorial or equestrian, were liable (Zumpt, *Criminalr.* ii. 2. 296).

On the primary object of the leges *de repetundis* (to deal with maladministration in the provinces), and the history of the *quaestio de repetundis* and the successive laws which it administered, v. Ry. *Rom. Ant.* pp. 306, 307: and an excursus in Heitland and Cowie's Cic. *div. in Caec. et Verr. a. pr.* pp. 53-55. **Page 40**, l. 3. **more maiorum** (a phrase too common to need illustration) is almost invariably a term of praise in the mouth of the true Roman, who is a 'fautor veterum.' 4. **aliud si . . . debuisse**: we may wonder that Cicero should seem to approve of such a perfunctory discharge of duty by a juror: and may be tempted to turn the tables on him, and ask how it would fare with Cluentius, if alleged *praeiudicia* were to take the place of evidence and counsel's pleading with the present *iudices*. On the construction of **adducti sunt** v. crit. n. The reading of Ernesti, *addocti*, which Madv. calls *barbarum*, might give a fair sense, 'were brought to see,' *ad* implying a graduated lesson. 7. On the personal use of **constarent** v. crit. n.

XXXVIII. 105.—10. **rumusculos aucupati**, same expression in *leg.* iii. § 35, dissidente a bonis atque omnis rumusculos popularis aurae aucupante: 'idle plaudits.' A contemptuous diminutive from *rumor*, 'the common talk': cp. the use of the simple noun in Ennius' famous line (of Q. Fabius Cunctator)—

noenum rumores ponebat ante salutem.

In Verg. *A.* viii. 90, iter inceptum celerant *rumore secundo*, the *cheering* of the rowers is denoted: cp. with this *rumorem*, § 131. On the diminutive cp. n. on § 37. 11. **qui**, as in § 103, l. 12, ubi, v. crit. n. **si . . . quaereret**: **si interrogarentur**: **si essent rogati**: **quaesitum si esset**: the more vivid presentation of a supposed past action given in the imperf. is abandoned for the alternative form of statement as an assumption contrary to the fact. 16. 'For no one voted for an acquittal,' sc. of Fabricius. 18. **una sententia**: according to § 55, that of Staienus. 19. **vellet**, hypothetical subj., the tense denoting continuous action in past time, *tum* (like *iam* in l. 10) referring to the time which succeeded Falcula's acquittal.

106.—20. **redderet**, also hypothetical subj. of action occurring in *present* time: cp. n. on § 63, and v. R. 1530 c, r. 638 c: the mood thus used with the condition suppressed is called *potential*. R. 1534, r. 642. **rei iudicatae**, praeiudiciis de Scamandro et Fabricio factis.—MAN. 22. **esse**, after *constitisse* is not easy to explain. The pres. must denote the permanent characteristic, 'is always': though this is a poetical use, as Verg. *A.* viii. 141, (Maiam) idem Atlas generat, 'is her father.' The pres. with *iam dudum* is the nearest parallel in prose. Perhaps *fuisse* should be read; v. crit. n. 22. **de statu, suo declinarint**, 'receded from the position which they had occupied.' *Status*, a *fixed* position: as in *leg. agr.* i. § 26, si status hic rei publicae maneat. Cp. § 196 n. 28. **constantiam**: cp. l. 20, sibi constitisse, and Gloss. sub voc. *con-*

scius. 32. **paulo posterius patefacta re condemnare maluerunt**: contrast *primo*, § 76, l. 22, 'at the first hearing.' The words are not intended to imply that a second hearing ever *came* in the case of Opp. [Mr. Roby tr. 'preferred to put off condemnation to some later occasion, when the facts were made clear.' Mr. Davies has taken the words quite differently: v. crit. n.] Comparing the language of this and the following section (especially the expressions *sapientes*, *ex vetere illa iudicum disciplina*, ll. 1, 11, below) with that of the beginning of § 76, we cannot but identify those who voted *non liquet* with the nine men here named. (Ry. *Introd.* p. 18, note 2, supposes the latter to have voted *guilty.*) Five acquitted (§ 76). Eight voted guilty, and were suspected of or charged with venality afterwards. There were thirty-two jurors in all (§ 74). Thus ten more must have voted guilty; and the numbers were 14 (9+5) for Opp., 18 against him: if we may judge from the *pro Cluent.* alone. But this result is inconsistent with a statement in *pro Caec.* § 29: v. *Introd.* iii. § 9.

107.—Page 41, l. 3. For the triplet arrangement of the epithets *prudentior*, *peritior*, *diligentior aut sanctior*, cp. n. on § 15: Balbus is the shrewd thinker, the well-read lawyer, and the virtuous juror in one. The same arrangement appears in the words *fide*, *religione*, *officio*: and in the threefold question (ll. 5-7) about Considius. **iure peritior**: but l. 6, *dignitatis peritior*. The latter is the regular construction: of the former I can find no other ex. in Cic.; here the abl. is used for the sake of symmetry with the other ablatives, is in fact abl. of 'thing in point of which' attached to *peritior* as it might be to any other adj. Cp. iure consultus for iuris consultus (the commoner usage). R. 1210, r. 497: for the gen., which is objective, R. 1314, r. 525. 4. **Non absolvit**: *non condemnat*, the other side might say. But Cic. is making the most of his case. Were he speaking (as Ry. thinks) of those who voted guilty, he would certainly say *condemnat* outright, with no litotes. 8. **longum est**: for the mood cp. § 36, longum est dicere mihi, with note. On the reading of this sentence v. crit. n. 10. **Ex vetere illa iudicum disciplina**, cp. § 76, homines . . . ex vetere illa disciplina, with note. **fuit**: [nam] obierat.—MAN. 12. 'Who had, each one of them, achieved in the law-courts an eminence like that of the country to which he belonged.' 13. **Ex eodem numero**: an attraction for ex eorundem numero. So ex eo numero, in eo numero (far commoner than in eorum numero, according to Mayor, *Phil.* ii. § 25). Cp. *Verr.* ii. 4. 3, ex quo potius numero [incipiam] quam ex ipsis laudatoribus tuis? Sall. *Iug.* xxxviii., ex eo numero quos . . . corruptos diximus. Similar attractions are ea gratia = eius rei gratia (Sall. *Iug.* lxxx.) ea scientia, *de Fin.* i. § 63. 16. **ingenio et diligentia et religione**: cp. what was said of Balbus at the beginning of the section.

108.—18. **in**: cp. n. on § 32, l. 25: § 78, similis in Bulbo . . . suspicio consistebat. 19. **ambitiosus**: cp. ambitione adducti, § 76 *ad fin.*

qui distulit: 'by voting *not proven* a juror virtually demanded a further hearing of the case' (P.). 'Is held to have been interested . . . politic . . . consistent.'

XXXIX.—23. **per**: for this instrumental use v. n. on § 25; owing to the excited mob no speaker could hold his ground' or 'command a hearing.' For **consistere** cp. § 193 n. 24. **pervertit**, 'upset,' *i.e.* 'ruined': =*pessum dedit* in older Latin, which is surely the same etymologically. L. and Sh. derive *pessum* from *pedis-uorsum*, 'brought towards the feet,' *i.e.* 'to the ground': Vanicek says that *pessum*=pedtum ('ground,' of same root as *pes*, *oppidum*, *pessimus*): the latter derivation requires a simpler phonetic change. But the analogy of the assimilated forms *russum* (same as rursum, *i.e.* re-uorsum), *sūsum* (sursum, sub-uorsum), *retrosum* (retrorsum, retro-uorsum), all containing a propositional element, points to *per-uersum* (persum) *pessum*: *per* having the same force as in *perdo pereo*. (Thus either phrase is used of the sinking of a ship, Pl. *Rud.* ii. 3. 64, cum navi scilicet abiisse *pessum* in altum; Pl. *Epid.* i. l. 70, puppis *pereundast* probe.) For the loss of r, cp. *peiero*. 25. **paucis illis diebus**: for this abl. of 'time in the course of which' v. n. on § 22. 26. **defervisse**, 'had cooled down.' *De-* gives the idea of doing a thing *to the end*: hence (*a*) *to the utmost point*: so in Hor., qua parte debacchentur ignes, 'where raves the fire unrein'd,' Conington (*C.* iii. 3. 55), ventos aequore fervido deproeliantes (*C.* i. 9. 11); dum pelago desaevit hiems, 'rages its fill,' Verg. *A.* iv. 52. (*b*) '*to the vanishing point*': *i.e.* to cease to do: nec dum desaeviat ira exspecta, Luc. v. 304; *depuduit*, 'I have done with modesty,' Ov. *Her.* iv. 155.

109.—30. **Iam**, καὶ μήν: v. § 46, crit. n. **insolentia**, the arrogance of the upstart who finds himself in a position to which he is *unaccustomed*. **Spiritus**, 'pride,' always in a bad sense in good prose: *Sull.* § 27, res enim gestae, credo, meae . . . mihi nescio quos spiritus attulerunt. 32. 'How insufferable he was,' equivalent to the words of § 110, quanto in odio . . . suis . . . fuit. The commentators refer, for this passive use of *odium*, to Plaut. *Asin.* ii. 4. 6, iam hic me abegerit suo odio (=*odiosa* importunitate, Lamb.); Hor. *Serm.* i. 7. 6, durus homo atque odio qui possit vincere Regem; in both, however, the shade of meaning is different: 'tediousness,' as in the conversational *odiosus*, 'a bore.' **ignorantia**: v. crit. n. **Page 42**, l. 2. **condonatum**: 'that Opp. had not been pardoned out of consideration for himself and the defence he made.' So Hor.:

> protinus et graves
> iras et invisum nepotem
> Marti redonabo,

where Wickham quotes Caes. *B. G.* i. 21, Dumnorigem Divitiaco fratri se condonare dicit, properly 'to make a present of D. to D.' Cp. § 195, note. 4. **Erat . . . defendi**: cp. n. on § 51, l. 30: also crit. n. on § 57,

l. 2. 6. **aliquis**, 'some one')(*nemo; quilibet*, *quivis* would be 'any one,' as in the proverb 'non cuivis contingit adire Corinthum.'

XL. 110.—10. **ad quinquaginta**, prope quinquaginta.—Man. 11. **patroni**, 'an advocate'; **advocati**, 'a legal adviser' or 'backer': cp. n. on § 54, l. 25, *advocabat*, for the proper meaning of these words. In Plaut. *Poenulus* iii. 1 Agorastocles employs certain citizens (called advocati) to lure the pander into a trap and then act as *testes* against him. 28. **laudatoris**, 'witness to character,' n. on § 56, l. 23. 12. **Rostra**, the tribune in the Roman forum, so called from the ships' beaks, taken in the Latin war, with which it was ornamented. V. Rich. *Dict. Ant.* (Never called '*Rostrum*' in Latin.) Cp. *de imp. Pomp.* § 55, non pudebat magistratus populi Romani in hunc ipsum locum escendere, cum eum nobis maiores nostri exuviis nauticis et classium spoliis ornatum reliquissent. 13. **iam diu . . . a tribunicia voce desertum**: this must not be taken to imply that the tribunes by the legislation of Sulla lost the right *agendi cum populo*. The restrictions which Sulla imposed (especially on their right to introduce a *rogation*) were not taken off until B.C. 70; and the agitation of Quinctius of itself shows that the tribunes of preceding years were silent, not because they could not, but because they would not, speak. Momms. *R. Staatsr.* ii. 296 n. 2 (cp. also Momms. *R. H.* iii. p. 364). Cp. n. on § 74. 14. On the use of *a* here instead of the instrumental abl. v. crit. n. **ad veteris . . . similitudinem**, 'to something like the former practice.' 15. 'On whose shoulders he had risen to still greater eminence.'

111.—20. **illam usque ad talos demissam purpuram**; viz. the *toga praetexta* (purple-edged toga) of the curule magistrate, which was *not* worn by the quaestor or lower officials, nor by plebeian magistrates such as the *tribunes*, none of whom enjoyed the curule chair. It is to be observed that the sense of the passage requires us to refer these words to a time subsequent (*postea*, l. 17) to Quinctius' tribunate. It is to be supposed that Quinctius after his tribunate rose 'to a higher place,' to the curule aedileship or praetorship. (So Cic. derides Vatinius for having as tribune bought a *praetexta* to be ready against the aedileship which never came to him, *in Vatin.* § 16). Some of the older scholars falsely referred the words to the period of Quinctius' *tribunate*, but an express statement of Plutarch forbids this: περιπόρφυρον ὁ δήμαρχος οὐ φορεῖ τῶν ἄλλων ἀρχόντων φορούντων, *q. R.* 81. Graevius gives the above view as that of Rubenius. V. Momms. *R. Staatsr.* i. 403, n. 2; Ry. *Rom. Ant.* p. 455; Rich. *Dict. Ant.* *toga* (*praetexta*, p. 670). **purpuram**: Quint. v. 13. 39, explains—adversus Quinctium Cicero . . . ipsam etiam *praetextam* demissam ad talos insectatus est. Cp. Hor. *Epod.* iv. 7, of an arrogant parvenu,

Sacram metiente te viam
cum bis trium ulnarum toga.

'Six ells,' *i.e.* twelve to fourteen feet, was the length of the whole toga,

before it was thrown over the shoulders—an extravagant size (Marquardt, *Privatleben*, p. 538). This must refer to the fashionable *toga* of the period, the *toga fusa*, which swept the ground (v. Rich, p. 669), as must our present passage. 22. **Et iam querimur**, 'and yet we actually complain!' v. crit. n. 23. **homo novus**: **ignobilis**: **nobilitas.** The political distinction between patricians and plebeians had scarcely disappeared when a new division between *nobiles* and *ignobiles* appeared. The former class comprised all who had the *ius imaginum*, *i.e.* all (whether patricians or plebeians) whose fathers or ancestors had held curule office in the State. (V. Glossary, *nobilitas*, and n. on § 11, l. 3, § 72, l. 1.) This new aristocracy of titled families was for a long time as exclusive and as close as the old patrician aristocracy; its claim was less constitutional and its methods more unscrupulous. Known in politics as the party of the *optimates*, it received its first blow from the Gracchi, and from that time its serried phalanx was not unfrequently broken by some intruding *novus homo* such as Marius and Cicero. (Cp. *Mur.* § 17.) The *novus homo* was the founder of a family—an *ignobilis* by birth, who had attained curule office first of his family—a 'self-made man.' *Vell.* ii. 34 has an oxymoron: M. Cicero vir novitatis nobilissimae. Consult Ry. *Rom. Ant.* p. 67, and an excellent note in Mr. Brooke on Sall. *Iug.* ch. v. 25. **nobilitatis dignitatem virtute tueri**: v. Gloss. *dignitas.* So in *Sest.* § 98, otium cum dignitate is the attribute of the conservative optimates, meaning *not* 'dignified ease,' but rather an 'honourable conservatism' in political *action*: rerum gerendarum d. is opposed to the studium rerum novarum of the populares (Halm.).

112.—29. For **idem** v. n. on § 128, l. 32. 31. **intolerantia** is passive in classical Latin: *intolerans* is sometimes passive in Tac. The expression recurs *leg. agr.* ii. § 23, non privatorum insaniam sed intolerantiam regum (cp. just above, rex non ferundus). Cp. passive use of *odium*, § 109. and *insolentia*, 'strangeness,' used of a thing as that 'quod non solet fieri'; *e.g.* Sall. *Iug.* 94, insolentia itineris. 32. **ita tulerunt ut . . .**, 'men put up with it, considering that any good points, for which he was indebted to nature, ought to count in his favour . . .' For *ita . . . ut* with this restrictive force cp. n. on § 49.

XLI.—**Page 43,** l. 3. **Sed ut illuc revertar**, 'to resume': ἀλλ' ἐκεῖσε ἐπανέρχομαι, Dem. *de Cor.* § 66. 4. **quaero**: v. crit. n.

113.—5. On **at**=*at enim* cp. § 83, ll. 18, 24. 7. **Illa igitur . . .**: retorquet argumentum.—MAN. The argument disproves not the innocence of Falcula but the honesty of Quinctius. **illa . . . Quinctiana**: urgente trib. pl. Quinctio facta.—MAN: the trials of Junius, Bulbus, Popilius, Gutta, and Staienus. 8. Cp. § 93, contiones . . . seditiose ac *populariter* concitatas. The word *popularis* in Cic. often appears in bad company. In *leg. agr.* ii. § 7-10 he discusses 'huiusce verbi vim et interpretationem'; and denies that the democratic party are true *populares.* 10. **Iam**: the force of *iam* in these clauses is, 'now, then, we have arrived

at this result.'—Ry. Cp. n. on § 87, l. 31. 10. **aliqui**: cp. § 7, l. 7 n., l. 12: substantival. 11. **eos**, a rhetorical plur. The reference is of course to Falcula. So *Verr.* i. § 39, of the same circumstance: quod inventi sunt *senatores* qui . . . exirent in eum reum quem incognita causa condemnarent. It has the effect of making the assertion or denial more comprehensive. (Cp. for another use *liberos*, § 31 n.) 12. **putabitur**: v. crit. n. 16. **aliquid** (not *quidquam*), 'some particular element,' as opposed to *nihil*: cp. § 109, l. 6 n. The concession of the adversary, 'potuit esse innocens Falcula,' with the emphasis on *Falcula*, is taken to imply 'but others were guilty: there was some reason in F.'s case for his giving the verdict of guilty, other than a bribe.' Cp. crit. n. here.

114.—18. The effect of the position of **tu** (with its relative clause) is to emphasise, by separating, the two parts of the dilemma. 'You must either find fault with one of your vaunted legal decisions, or you must accept it and, by implication, allow that the condemnation of Opp. was not bought.' 21. **Quamquam**, 'and yet,' introducing a reservation, '(I have given you an unanswerable argument ;) and yet . . .,' R. 2215, r. 871 (6); οὐ μὴν ἀλλά in Demosth. 34. **ex tam multis iudicibus**: those who tried Opp. 22. For the construction of **damno** cp. § 32, § 97, notes. 23. **mihi**, the so-called ethic dative: cp. § 97, tu *mihi* ex tota causa Bulbi, quod tibi commodum est, eligis: and v. n. on § 75, l. 14. 'A person accused of **ambitus** was charged with having *given* money for an unlawful purpose—one accused **de repetundis** of having *received* money unlawfully.'—Ry. Cp. § 98, where the two are contrasted. 27. **propria lege**; the lex de repetundis, or the lex Cornelia de sicariis.

115.—29. **qua quisque . . . lege factus esset**: the plup. is really frequentative, as in § 52, apprehenderam: the mood is assimilated to that of *periret*; that is, it is an integral part of the consequence stated: 'If this charge of yours was so effective that, no matter under what law each of these jurors was impeached, the fatal blow was always given in that form, why was it that the rest were not impeached when accusers were so plentiful and rewards so high?' (Not as P.) He refers in *illis iudicibus* to the jurors actually condemned, such as Bulbus and Staienus. For **in** 'in the case of,' giving the *circumstances*, cp. § 32, in eadem iniuria, with n.

VI. Sixth: Litis Aestimatio against Septimius Scaevola, which was not a iudicium.

33. A short paraphrase of this somewhat difficult passage may not be out of place: 'Here I am confronted with the *litis aestimatio* against S., though it ought not to be adduced as a legal decision. I am speaking before good lawyers; and it is not necessary to explain at any length what a *lit. aest.* is. But anyhow, the strict care which characterises all other trials is no longer to be expected when once the verdict

of guilty has been pronounced. Personal considerations—the fear of making an enemy—will enter into the problem, and the jury will refuse to admit a capital charge against the man whom they have condemned; or, perhaps, having cleared their consciences by the verdict, they will be less careful how they make their assessment. Because they are thus lenient or careless or both (*itaque*) it will happen that a criminal is rendered liable to a fresh charge (such as *maiestas*) by the terms of the *lit. aest.*, but acquitted when brought to his trial on it: or, again, a third party is implicated in the *lit. aest.* as the recipient of money embezzled, and acquitted when separately tried. Such a conflict of sentences is no upsetting of legal decisions; it is simply an assertion of the principle that a *litis aestimatio* is not the same thing as a *iudicium*.' 7. **litem eo nomine esse aestimatam**: the following passage does not give us a very full explanation of the *litis aestimatio*, nor, as Cicero professes to be addressing experts, can we expect it, and there is no reason (with Ry.) to suspect the text. In cases of repetundae or peculatus the **litis aestimatio** was as distinct from the *iudicium* or verdict of guilty or not guilty as is the verdict of the jury from the sentence of the judge with us. It was (according to *Rab. Post.* § 8) quasi *appendicula* causae iudicatae atque damnatae. (i.) It was the process by which, in the case of certain offences in which the punishment admitted of as many degrees as the offence, all the details of the penalty were adjusted: on what score (*quo nomine*) compensation was to be made, to what persons, in what amount. (ii.) Besides this specification of the *degree* of the offence, a different complexion might be given to the offence in the course of the investigation. 'The *l. aest.* was not a mere assessment of damages, but might also contain a statement that the accused was guilty of an offence which should be tried under another quaestio.' Pseudo-Ascon. on *Verr.* i. 39, litis aestimationem fieri non solum ex titulo propositi criminis sed etiam ex *aliis probationibus* quae ex ante actis rebus apud iudices constiterint (quoted by Prof. Nettleship in P.). (iii.) More than this, other persons might be incriminated, and might be called up to defend themselves against the imputation made upon them. These three points are illustrated in the text, § 116, lines 4-8, 8-10, 10-13. As there was nothing repugnant to Roman notions of justice in the idea of taking other offences into account, besides that charged, in convicting a man, so it was also in sentencing him (though here English practice accords). And as the litis aestimatio might lead to a trial and condemnation on another charge (notified in the assessment upon the original charge) he might presumably suffer twice for the same offence. [It will be well to collect the main references to *litis aestimatio* upon which the above statement is based:—(i.) Pseudo-Ascon. *Verr.* i. § 38, hoc est pecunia de qua lis fuit, et propter quam condemnatus est, in summam redacta, quae de eius rebus exigeretur: 'This denotes the money, on account of which the case was tried and the defendant convicted, brought

up to a fixed sum to be levied upon his goods.' Also Cic. *Verr.* l.c., an important passage as to Septimius: quid sit quod P. Septimio senatore damnato, Q. Hortensio praetore de pecuniis repetundis lis aestimata sit *eo nomine*, quod ille ob rem iudicandam pecuniam accepisset: '[The Roman people shall hear from me] why it is that when P. Septimius, a senator, was found guilty in the court in which Q. Hortensius as praetor tried cases of extortion, the damages were assessed on this count, that he had taken a bribe as a juror.' *Verr.* ii. 1. 95, hoc scitote cum iste civitatibus frumentum coria . . . imperaret neque ea sumeret proque his rebus pecuniam exigeret, *his nominibus* solis Cn. Dolabellae HS ad triciens litem esse aestimatam: 'Understand that, whereas Verres levied corn, hides, etc., from the states, and in lieu of these, which he would not take, required payment in money, on these counts alone damages to the amount of 3,000,000 sesterces were assessed against Cn. Dolabella.' He goes on to quote the heading of the *l. aest.* 'DE LITIBUS AESTIMATIS CN. DOLABELLAE PR. PECUNIAE REDACTAE,' followed by one of the items. *Verr.* ii. 5. 128, Dexo hic . . . non ex litibus aestimatis tuis pecuniam domum sed ex tua calamitate cineri atque ossibus filii sui solatium volt aliquod reportare: 'This Dexo [whose son you took from him] hopes to take home with him, not a sum of money in the shape of damages got from you, but some comfort for his dead son in the fact of your conviction and ruin.' *Muren.* § 42, lites severe aestimatae (he mentions this as a function of the praetor who presided in the quaestio peculatus). (ii.) Pseudo-Ascon. on *Verr.* i. § 39 continued: hi [*qui ambo peculatus damnati sunt*] peculatus crimine proposito etiam quas iudicando pecunias ceperant, reddiderunt: 'These men, both convicted of embezzlement, which was the charge preferred against them, had to restore also the bribes which they had received as jurors.' Cp. *Verr.* i. § 38. (iii.) *Ad Fam.* viii. 8. 2 (Watson, 34): M. Servilius postquam omnibus in rebus turbarat . . . neque Laterensis praetor expostulante Pausania, nobis patronis, QVO EA PECVNIA PERVENISSET, recipere voluit, Q. Pilius . . . de repetundis eum postulavit: 'M. Servilius had been guilty of fraudulent bankruptcy on a large scale, and the praetor Laterensis, in spite of the representations of Pausanias, while I was counsel for the defence, refused to entertain an inquiry as to "where the money involved had gone"; upon which Q. Pilius sued him for extortion.' (And *ib.* § 3: eosdem qui lites aestimarant iudices, referring to a case in which C. Claudius had been condemned and fined.) *Rab. Post.* § 9: ita contendo; neminem unquam, QVO EA PECVNIA PERVENISSET, causam dixisse, qui in aestimandis litibus appellatus non esset; in litibus autem nemo appellabatur, nisi ex testium dictis, aut tabulis privatorum aut rationibus civitatum. Itaque in inferendis litibus adesse solebant, qui aliquid de se verebantur: et, cum erant appellati, si videbatur, statim contra dicere solebant; sin eius temporis recentem invidiam pertimuerant, respondebant postea; quod cum fecissent, permulti saepe vicerunt: 'What I maintain is this: no one ever stood his trial as the receiver of misappro-

priated moneys without having first been named in the *litis aestimatio*: and there no one ever was named, save on the statements of witnesses or from the books of private persons or the accounts of some community or other, and so persons who had their fears usually appeared at the settling of damages, and whenever they were expressly named, they spoke forthwith in their own defence, if so inclined; or, if they feared to face the strong feeling of the time being, reserved their reply for a later occasion: and many after so doing came out triumphant.' Refer to Prof. Nettleship, *Essays*, p. 82, Ry. note on this passage, and *Rom. Ant.* p. 300.

Page 44, l. 2. **pluribus verbis docere**, 'to explain at length': cp. n. on *plures*, § 184. **ea**, taken up by *eadem*: cp. *Sest.* § 130, ut *ei*, qui a senatu de me rogabantur, *eidem* senatui pro me supplicarent: and § 7, *hunc* taken up by *eum*, with reff.

116.—4. We find both *lis* and *lites* in this phrase: the plur. probably expresses the different items in the assessment. 8. **Itaque . . . aestimatae.** Ry. objects to this sentence, thus read [v. crit. n.], as being 'completely at variance with the tenor of Cicero's observations. . . . Far from being an illustration of the careless leniency of jurors, it would rather be a proof of vindictive persecution.' But Cic. argues, not that jurors are always *lenient* in *lit. aest.*, but that they are always *careless*, and that sometimes in the way of severity (as in the case of Scaevola), sometimes in that of leniency. The leniency, of which Ry. sees an additional proof in the next sentence (et hoc cotidie . . .), was that of *iudices* in a *iudicium*, *not* of *iudices* in a *lit. aest.* It is because jurors are negligent in a *lit. aest.* that this process does not carry the weight of a *iudicium*: brought to the test of the latter, it sometimes proves itself a 'brutum fulmen': indeed the selfsame *iudices* acting in *iudicium* will recant their own sentence given in *lit. aest.* Of the sentence as he reads it, *without maiestatis*, Ry. offers no version at all. 15. Scaevola was condemned under the lex de repetundis before the praetor Hortensius in B.C. 72, for malversation in Apulia (aliis criminibus), the fact that he had taken a bribe in the trial of Opp. being taken into account by the jury in their *litis aestimatio.* 16. 'The utmost efforts were made to have the damages brought in as capital.' The interpretation of Manutius will not commend itself: 'that this capital charge [lis haec capitis, viz. *maiestatis* (?)—for tampering with jurors] with which S. is now threatened, should be computed in a fine against him.' 19. **hac lege ipsa**, under the sixth section of the lex Cornelia de Sicariis. V. Introduction.

VII. SEVENTH: THE SUBSCRIPTIO CENSORUM, ATTACHED (*a*) TO THE NAMES OF SEVERAL JURORS, (*b*) TO THAT OF CLUENTIUS HIMSELF.

XLII. **117.**—22. **animadversio**, implies a *subscriptio*, § 118 and § 119 *init.*, and is equivalent to notatio, § 128: the censor attaches a *nota* or mark in the burgess-roll or list of knights or list of senators to the name of the

man who is to be degraded. (*Notio*, however, is the 'taking cognisance' of the offence, the informal examination by the censor which preceded his *notatio.*) V. Ry. *Rom. Ant.* pp. 168, 169 (with this reservation), Momms. *R. Staatsr.* ii. 370 n. On *subscriptio* see further crit. n. on § 126, l. 8. **animadversionem atque auctoritatem**: the case is due to attraction. We may cp. that after *quam*, as a common instance: *Nat. Deor.* i. § 86, non animadvertunt, hic eum ambigue locutum esse, sed multis aliis locis et illum et Metrodorum tam aperte quam paulo ante *te*, i.e. *tu locutus es.* **auctoritas**, concrete, an 'official deliverance': so *Sest.* § 35, Italiae totius a., 'expressed opinion.' V. Glossary. 25. **periculi**, in its forensic sense: v. n. on § 18. The 'danger' is simply that of an adverse verdict. 26. **ratio**: v. Glossary for the meaning. 27. 'Who last held the censorship': Cn. Cornelius Lentulus and L. Gellius were censors in B.C. 70, the office being revived; Sulla had left it in abeyance. They signalised themselves by excluding 74 senators. 28. **cum altero**, sc. Lentulo; but the name is reserved for the present. 30. **necessitudo**, 'intimacy': cp. n. on § 94.

118.—30. **subscriptio**: in affixing the mark (*nota*) the censor was expected to assign in writing his reason for doing so (*subscribere*, § 119, l. 12). Hence *subscriptio* is the technical term for the censor's stigma. (Ry. *Rom. Ant.* p. 168.) Aulus Gellius (iv. 20) gives two amusing instances. The censor put a man upon his oath in the formula, 'ut tu ex animi tui sententia uxorem habes?' 'Do you take your oath in good faith, that you have a wife?' The man could not miss an opportunity, and replied, 'habeo equidem, sed non hercle *ex animi mei sententia*,' 'I have, but not *to my liking*.' For this ill-timed levity he was disfranchised, 'causamque hanc ioci scurrilis apud se dicti [censor] subscripsit.' Another, who appeared at the review of 'knights with a public horse,' a lean ill-groomed beast, while he himself looked sleek and plump, was asked by the censor 'why he was better kept than his horse?' He replied, 'Because I groom myself, but my good-for-nothing slave Statius grooms my horse.' This wag was similarly 'in aerarios relatus,' his want of respect being alleged in the 'subscriptio' appended to the nota. 32. **ratione censoria**: v. Glossary. *Ratio* denotes abstract theory as opposed to facts, viz. the conduct of those particular censors. 33. **a Lentulo**: the reservation of the name is rhetorically effective. He is the *alter* of § 117. **Page 45**, l. 4. **in amicorum periculis**, cum eorum causas agit.—MAN. 5. The flow of the construction is broken by *mihi concedat ut*: cp. a similar sentence, *Div. in Caec.* § 50, ex quibus alienissimis hominibus ita paratus venis ut tibi hospes aliquis sit recipiendus. 6. **sine huius periculo**, 'without danger to my client': *sine*)(*cum* expressing the *condition* (ἐπὶ with dat.), as in tuo cum maximo malo: Pl. *Capt.* iii. 5. 23, at cum cruciatu maxumo id factumst tuo, meaning 'your act shall cost you dear.' Cp. Xen. *Cyr.* i. 6. 21, οὐδὲ γὰρ δῶρα ἐπὶ τῷ αὐτοῦ κακῷ ἑκὼν οὐδεὶς λαμβάνει. 7. **pedetemptim**, 'tentatively'; the idea is 'feeling for

each step before you take it,' so 'slowly,' 'cautiously,' *βάδην*. 8. 'My loyalty in the defence of my client': *huius* is governed by *defensionis*. Cp. § 10, fide atque officio defensionis. 9. **dignitas**, 'nor to have infringed the *prerogative* of any person.' V. Glossary.

119.—10. **Video**: v. Glossary. In this sentence the exact distinction between the terms *animadversio* and *subscriptio* clearly appears. 12. **illud commune**, 'the general proposition.' § 13, illo *communi* dolore muliebri, 'the anguish which *any* woman would feel')(the private and particular anguish of this or that woman. 14. **in**, § 51, l. 27 n. 15. Of C. Geta we have the following notice in Valerius Maximus, quoted by Ry.: C. Geta cum a L. Metello et Cn. Domitio censoribus senatu motus esset, postea censor factus est. Metellus and Domitius were censors B.C. 115, and removed from the senate; C. Licinius Geta, consul B.C. 116, and afterwards censor B.C. 108. 'There are plenty of examples, not only of persons thus *notati* attaining office afterwards (as Mamercus Aemilius, Liv. iv. 31. 5, and C. Geta), but of their attaining it while the *nota* was still operative,' that is, before the *lustrum* inaugurated by the same censors expired. By gaining office the *notatus* regained his place in the senate. Cic. *de Rep.* 4. 6, *censoris iudicium nihil fere damnato nisi ruborem adfert.* Itaque ut omnis ea iudicatio versatur tantummodo in nomine, animadversio illa ignominia dicta est: an important reference, as showing that, at any rate for Cicero's time, the substantial penalties which the censor could inflict were (if any) very small. V. Ry. *Rom. Ant.* p. 169; Momms. *R. Staatsr.* i. p. 462 n., ii. pp. 392, 393, 404. 18. **reprehensi**: cp. n. on *reprehendissent*, § 98. 19. **moribus praefuisse**; on this discretionary power of the censors, which, whether part of their original prerogative or not, was the most characteristic and historically the most important of their duties, v. Ry. *Rom. Ant.* p. 168. Cp. Cic. *de leg.* iii. § 7, censores, . . . mores populi regunto, probrum in senatu ne relinquunto; *Pis.* § 10, quam potestatem (censoriam) minuere, quominus de moribus nostris quinto quoque anno iudicaretur, nemo . . . conatus est; Liv. iv. 8. 2 (censura) tanto incremento aucta est, ut morum disciplinaeque Romanae penes eam regimen, in senatu equitumque centuriis decoris dedecorisque discrimen sub dicione eius magistratus essent. Cp. also *infra*, § 129 praefectus moribus. 20. **turpi iudicio . . . ignominia**: *infamia* was the result of a *turpe iudicium*, *ignominia* of the *subscriptio* of the censor The former was the more serious and permanent. Conviction in a turpe iudicium (such as *furtum*, v. *infra*; *iniuria*, assault or libel; *dolus malus*, fraud) was one of the things which disqualified a man for ever standing for public office. But condemnation in an ordinary criminal process was not enough to do this, nor was the imminence of a serious charge, unless the presiding magistrate ruled it so (as in the canvass of Catilina, B.C. 66). As to the censorial *nota*, probably it did suffice to disqualify, as long as it was taken seriously: but for this period Cicero's argument in these chapters (xlii. xliii.) shows that this was no longer the case.

Ry. *Rom. Ant.* p. 84, on *infamia* and *ignominia*; Momms. *R. Staatsr.* i.[2] pp. 467, 468. 22. On **ignominia** v. ref. to Cic. *de Rep.* 4. 6. in n. on l. 15.

120.—23. **Nunc,** *νῦν δέ*, 'but as it is': generally in connection with an unfulfilled supposition (preceding it as a rule): as in § 139, nemo adhiberet oratorem. Nunc adhibemur . . .; § 171, § 80, itaque nunc quem admodum audiar, sentio . . . at tum si dicerem non audirer: 'But the fact is, that a freedman . . . may procure the conviction of some man for theft, and he will lose every privilege of rank, and never recover a shred of his respectability: but those whom Gellius and Lentulus themselves . . . stigmatised, have not merely returned to the senate but have actually been acquitted after formal trial on the charges brought against them.' 24. On *theft* as a subject of *iudicium privatum* in Roman law v. Ry. *Rom. Ant.* p. 275. 25. **ornamentis**: v. Gloss. 28. **captarum** [ob rem iudicandam] **pecuniarum**, cp. § 103. **nomine,** 'on account of': referring to the *subscriptio*, or statement of the *reason* for affixing the stigma. Cp. the use of *nomen* in accounts: § 99, quae cum accepisset nomine iudicii Safiniani, with n. **notaverunt**, n. on § 117, l. 22.

XLIII.—31. **non modo** (non) . . . **sed ne . . . quidem**, as in § 9, l. 4, ubi v. n. Cp. also § 89, l. 30. Here the negative is repeated (*neminem* . . . *non*): v. R. 2246 a, r. 884 a. 33. **iudicem,** 'arbitrator,' v. § 74, l. 29 n. **Page 46**, l. 1. 'In all laws which specify disqualifications for filling any public office, or being chosen juror or acting as prosecutor, this, the stigma of the censors, nowhere appears.' Cp. what was said above § 119, l. 15: also n. on *in aerarios referri*, § 122, l. 20. For *ignominiae*, gen. of definition ('this cause, viz. *ignominia*') v. R. 1302, r. 523 a. 2. **capere** is here 'to take an office upon one's-self.' It is conversely used, meaning 'to elect,' generally of the Flamen Dialis, Pontifices, augurs, Vestal virgins. 3. **lego**, in senatum aliquem § 132, scribam § 126, is a general term: *creo*, *facio*, and *dico* are used of all State appointments; *prodo*, properly to *publish* an appointment; *opto* 'to choose,' an old-fashioned word, whence *cooptatio*, the election by a *collegium* (of priests) to a vacancy in its body.

121.—8. There was no *provocatio ad populum*, 'appeal to the people,' against the censor's *subscriptio*: for the very reason that, as Cic. argues, it was not a *iudicium*. But the people could reverse the censor's action, say by electing the *notatus* to a magistracy (which would restore him his seat in the Senate, cp. n. on § 119, l. 15), or by a popular vote restoring him to his previous status (just as an exile might by popular vote be re-called). Cp. Momms. *R. Staatsr.* ii. 373 n. **religio** (*εὐσέβεια*, Demosth.) is constantly associated with the juror's oath: cp. § 107, l. 3, and Ry. *Rom. Ant.* p. 297. V. Glossary. For **diligentia**, 'vigilance,' cp. n. on § 3. 12. **qui iurati . . . referre**: these words seem to imply the existence at this time (after the law of Aurelius Cotta)

of a general list of jurors who were to serve in the different quaestiones for the current year, drawn up by the city praetor. Momms. *R. Staatsr.* ii. 221 n. Cp. n. on § 103, l. 24; also crit. n. here. **iurati**, referring to the oath of office taken by magistrates within five days of their entry upon office, and generally indeed on their first day of office. It was taken before the city quaestor in the temple of Castor. Cp. n. on § 91, l. 14; Momms. *R. Staatsr.* i.[2] p. 599.

122.—16. **iudiciis**: abl.; cp. § 96, l. 10, § 132, l. 25 n. 17. **tanti**, 'of so little value,' lit. 'at *only* so large a price.' Similar genitive of price in § 44, magni sua interesse arbitrabantur. It is probably a locative; such an instance as *pluris* being due to false analogy. 'Charisius says, *plure* aut *minore* emptum antiqui dicebant.'—R. 1187. Value is also expressed by the abl. proper, a modification of the instrumental abl. R. 1186, 1196; r. 494, 495. 17. **Atque etiam ipsi inter se censores**, cet. Ramsay instances the famous quarrel of M. Livius Salinator and C. Claudius Nero, censors in B.C. 204, who marked and degraded each other. Mommsen emphasises the exceptional sanction required for the censorial *nota*: whereas generally each member of an official *collegium* is invested with the whole of the powers of that *collegium* unless a *collega* interposes a veto, in this matter the positive co-operation of the *collega* is necessary: his mere acquiescence is not enough: the *nota* must represent the two censors acting in concert. In contrast with a *discors censura* such as this passage describes, cp. Liv. xlv. 15. 8, omnes eidem ab utroque et tribu moti et aerarii facti, neque ullius, quem alter notaret, ab altero levata ignominia. V. Ry. *Rom. Ant.* p. 169; Momms. *R. Staatsr.* i.[2] 278, ii. 1. 345. 19. **ut alter . . . vetet**: the censor by his *nota* either *movet senatu*, or *equum adimit* (cp. § 134 *infr.*), or *tribu movet*. Now, as to the third of these, we must distinguish between the operation of the censor's action in an earlier and in a later period. The transition from the former to the latter is marked by the censorship of Appius Claudius Caecus, B.C. 312, who allowed landless citizens and freedmen to be enrolled in the tribes: supplementing this reform, in B.C. 304, the censor C. Fabius Rullianus confined landless citizens to the four city tribes; the same was afterwards done with freedmen. In the former of these periods we have *tribules* paying a *tributum* on landed property, and, opposite to them, *aerarii* taxed on personal property. The latter have no *ius suffragii*, and in consequence no *ius honorum*: their only political privilege is to pay taxes. (A third class consisted of the *capite censi*, who had no property to show, and therefore could not be taxed.) In the latter period the *tributum* was raised on property of all kinds, landed or personal: *citizenship*, not landed ownership, was the qualification for membership in a *tribus*. Thus the distinction between *tribules* and *aerarii* (using the words in their old sense) disappears. A new distinction appears instead. There is now a higher class, who pay taxes on their land; and a lower class, who are taxed on their personalty. The former constitute the country tribes, the latter

(together with freedmen and *capite censi*) the four city tribes.—There is a corresponding change in the operation of the censor's *nota*. In the earlier period, by placing a man among the *aerarii* they disfranchised him. In the later period, the old *name* is retained, in *aerarios* referre, but now it signifies not a *loss* of tribe, but a *change* of tribe. The censor moves a man from a country into a city tribe; one so moved is called an *aerarius* still, but he retains the *ius suffragii*, *ius honorum* (cp. n. on § 119, l. 15), and right to serve in the army. Thus it is that Cicero can say, censoris iudicium nihil fere damnato nisi ruborem adfert, *de Rep.* 4. 6. (Momms. *R. Staatsr.* ii. 390-393, 402-404.) When Cicero says **in aerarios referre aut tribu movere**, he is instancing two cases of censorial action, which are, for his own time at any rate, identical. 20. Another phrase equivalent to **in aerarios referre** is *in tabulas Caeritum referre*; v. Ry. *Rom. Ant.* p. 82 for the ordinary explanation of the term. Cp. Hor. *Ep.* i. 6. 62, Caerite cera digni, 'men who have lost caste.' For the act. inf. **referre** v. crit. n. 24. **inter collegas discrepare**: we can say, 'haec res inter quosdam discrepat,' or 'de hac re inter quosdam discrepat': although the impersonal use is the more common. This is frequent in Greek: *e.g.* ἀρκέσω θνήσκουσ' ἐγώ, Soph. *Ant.* 547, for the impersonal, 'it will suffice that I die.' Cp. also § 104, quae praeiudicia *constarent*.

XLIV. 123.—28. **quia subscripserint**: contrast the mood in p. 47, l. 3, *quia verum est*. The alternative proposed is—Is it true because the censors have formally alleged it, or did they allege it because it was true? in fact, 'is it true on the censor's authority, or is it true in fact?' In either member the appropriate mood is used: Cic. passes from the region of opinion (si statuimus ita esse quia *subscripserint*, suboblique subj.) to the region of fact (*quod subscriptum est*, quia verum *est*, indic. of categorical assertion). 30. **quid agatis** and **ne . . . permittatis** both depend directly on **videte**, 'take care': cp. § 97, vide ne mea coniectura verior sit, with note. V. Glossary, *video*.—'Look to what you are about, or you will find that . . .' (P.). 31. **regiam**; *regnum* in the mouth of a Roman is equivalent to τυραννὶς in that of a Greek, or 'dictatorship,' 'absolutism,' in that of an Englishman. What a Roman calls 'royal' we might call '*imperial*.' 32. **censoria**, for the adj., as often in Cic., replacing a gen., cp. § 68, suppressiones iudiciales, with note. **illa acerbissima proscriptio**, n. on. § 88, ista multa iudicia. 'Est autem in similitudine nominum quidam lepor: "videte, ne subscriptio proscriptio sit."'—MAN. Page 47, l. 1. *retundo* has two meanings: (1) to *strike back*, *Catil.* iii. § 2, gladios in rem publicam destrictos rettudimus; (2) to *turn the edge*, *blunt*, as here: cp. Hor. *C.* i. 35. 39, o utinam nova | incude diffingas retusum in | Massagetas Arabasque ferrum! 2. **illum dictatorium stilum**, not *gladium*, v. crit. n. The pen of Sulla was as formidable as the dagger which it resembled. V. Rich, p. 621, for a picture of a *stilus*.

124.—3. **quia verum est**, v. n. on subscripserint, l. 28, and crit. n. here. The order of the words is—quia (id) quod subscriptum est, verum est. For the omission of the demonstrative, and the double regimen of clauses, cp. *Tusc.* ii. § 62, apud quos autem venandi . . . laus viget, (*eorum*) qui hanc petessunt, (*ei*) nullum fugiunt dolorem. 5. **quod in causa non est**: 'quid enim censoribus cum hoc iudicio?'—MAN. 8. **Vince**, 'prove': cp. Hor. *Serm.* i. 3. 115, nec vincet ratio hoc, 'nor shall philosophy prove this. 11. **auctoritatem censoriam**, § 117, l. 22 n. On **amplexato**, an active form confirmed for this passage by Priscian, v. crit. n. This 'future imperative' is most common in laws and commands in the legal style. R. 1495, r. 613.

125.—12. This calendar of Oppianicus' crimes is introduced with great effect: it is a *résumé* of the incidents of the following sections—in the order of their mention in this passage—41, 41, 37, 37, 23, 25, 26, 34, 40, 30, 31, 31, 31, 27 and 28, 47: the last sentence, cuius ministris, . . . corrumpendas, ll. 23-25, summarises §§ 49-69. The fact that Cic. thus brings his heaviest artillery to bear on the 'auctoritas censoria,' and that he deals with it at such length, proves that its moral effect was very considerable at Rome, whatever its legal consequences may have been. 14. **interleverit**, 'altered and interpolated,' cp. n. on § 91, (codex) interlitus. Such an offence might be indicted under the lex Cornelia de falsis, or lex Corn. testamentaria, a law of Sulla's, the first of its kind at Rome. Ry. *Rom. Ant.* p. 307. 15. **supposita persona**, 'by fraudulent impersonation'; v. Glossary, *persona*. *Suppono*, 'to substitute dishonestly,' *e.g.* suppositus puer, 'a changeling,' Gk. ὑποβάλλεσθαι, ὑποβολίμαιον τέκνον: here, 'to assume falsely.' 20. **uxores**, why plural? v. crit. n. Similarly in next line, **liberos**, cp. § 31, l. 12. 22. **suos liberos**, two children, by Novia and by Papia. 26. **inquam**, used, as often, in repeating the same word or phrase for the sake of emphasis, or of resumption at the turning-point of a long period. Cp. crit. n. on § 65. 28. **voluntas**, 'a deliberate purpose or exercise of will.' **opinio**, 'a fancy, a belief adopted without careful consideration' (Ry.). Cp. for the former the familiar

sic volo, sic iubeo: sit pro ratione voluntas.

'Carpit in *voluntas*, excusat in *opinio*.'—MAN.

XLV. **126.**—30. **Quid igitur . . . statuisse dicent**: Cicero is justified in maintaining that the *iudicium notioque censoria* (*Pis.* § 10: cp. n. on § 117) was not a *iudicium* in the same sense as a trial before a *quaestio*. At the same time certain formalities, approaching in character to those of such a trial, had to be gone through before the censor affixed his *nota*. The person incriminated was summoned, formally accused (cp. si qui contra dicere vellet, § 134), and allowed the services of an advocate, before the censors pronounced sentence. Only, compliance with those formalities depended on the censors' will and pleasure: herein lay the distinction from a *iudicium* proper. In the present passage Cic. seems to imply that

the right of defence was reduced by the censors of B.C. 70 to very small limits, while he does not positively assert that the accused had no hearing, which he probably would have mentioned had it been the case. V. Momms. *R. Staatsr.* ii.^{2} 372. 31. **dicam** : v. crit. n. **Page 48**, l. 2. **convelli** : cp. n. on § 6, l. 29, for the metaphor. 3. **quae summa est**, 'which however is very considerable.' The relative has an antithetical force, being equivalent to *quae tamen* : cp. *Sest.* § 115, sit hoc sane leve, *quod* non ita *est*. In such sentences we have sometimes the indic., sometimes the subj. : § 178, quae a Stratone . . . venenum . . . viro suo datum *simulasset*, instructam ei . . . tabernam dedit ; *Verr.* i. § 11, eum, cui legatus . . . *fuisset* in invidiam adduxit. In the latter case it may be more convenient to call the relative *concessive* (=quamvis ei). The indic. simply asserts the *fact as it is*, the subj. expresses the *connection* of this fact with others. The former is more usual when the *qui*-clause follows, the latter when it precedes, the principal verb : cp. two exx. in *Div. in Caec.* §§ 40, 41 (too long to quote in full), *qui* . . . *nihil aliud egi*, and *qui* . . . *ita verser*, *tamen*, cet. Cp. Bradl. *Arn.* § 510 ; R. 1714, 1711 ; r. 718, 719. 4. **aliquem**: cp. n. on § 113, aliquid. 5. **cum defendissem apud . . . praetores et . . . aediles curules**: the appointment of lower state-officials such as this 'aediles' clerk' seems to have rested with the board of magistrates (in this case the college of aediles) whom they were more particularly bound to serve ; but the higher magistrates (as here the praetors) exercised a certain control over the selection. Liv. xl. 29. 10, scribam eum quaestor Q. Petillius in decuriam legerat ; Sulla's *lex de quaestoribus*—quosquomque quaestores ex lege plebeive scito legere sublegere oportebit : so of the *praecones*. Momms. *R. Staatsr.* i.^{2} 322, 323. On the position of *scribae* v. Ry. *Rom. Ant.* p. 198. 8. **aerarium reliquisse subscripserunt**: v. crit. n. on the important variants here. Momms. says that **aerarium relinquere** is simply a synonym for *aerarium facere* (*R. Staatsr.* ii. 388 n.), quoting Liv. xxix. 37, which runs thus: *exitu censurae*, cum in leges iurasset C. Claudius, inter nomina eorum quos *aerarios relinquebat* dedit collegae nomen. Deinde M. Livius . . . xxxiv tribus aerarios reliquit . . . Inter xxxiv tribus et C. Claudium aerarium fore. Earlier in the chapter we are told that either censor bade the other equum vendere: surely this was *aerarium facere*, and the action *aerarium relinquere*, marking the *close* of the censor's term of office (*exitu c.*), is a confirmation of this act, 'to leave a man among the *aerarii*, where he was already.' We should expect *aer. facere* to have been used of M. Livius' wholesale visitation : but as it was done in retaliation for the act of C. Claudius, and done just before the censor gave up the registers, the same phrase is used of it. In another passage, *de Off.* i. 40, a similar phrase (which Momms. says 'is different'), *in aerariis relinquere*, occurs. It is used of the punishment of ten Roman prisoners of Hannibal, who broke their parole and stayed at Rome. As *prisoners*, they were already capite deminuti, hence it can be said 'eos censores, quoad quisque eorum vixit

. . . *in aer. reliquerunt.*' This seems an exact equivalent of *inter aerarios relinquere* (Liv. *l.c.*) [Dr. Holden says, wrongly as I take it, '*in aer. reliq.* i.q. *aerarios fecerunt.*'] Momms. *R. Staatsr.* ii. 388 n. [Mr. Roby so far agrees with this view as to hold that the phrase *aer. relinq.* expresses the effect of the censors' action rather than the action itself.]

127.—11. **Nam haec quidem**: a link has to be supplied in thought. '(So of all the decisions of censors—I need not go into them all): *for* in the present instance . . .' In Greek it would be καὶ γὰρ ταῦτά γε. '*Nam* incipiendi vim habet modo,' Donatus (prol. Ter. *Adelph.*) 14. V. crit. n. The subject to **dicant** (l. 15) is *censores*: this is the first of three alternative views proposed in regard to this *subscriptio* by the censors, viz. that *two only* were bribed. The second alternative comes in l. 20, aut illud adferant . . ., the subject again being *censores*. The view which makes '*my opponents*' the subject in the case of *dicant* (and, with the other reading, of *adferant* also), for which v. Ry.'s note, is not so good. 17. **contiones**, 'harangues,' cp. § 77, habetur una atque altera contio. 18. **in culpa . . . ponendi**: v. Glossary, *pono*. 20. **adfines**, 'parties to that scandal.' So Pl. *Trin.* 331, publicone *adfinis* fuit an maritumis negotiis? 'engaged in': v. Wagner *ad loc.* A colloquial use. 23. **Aut illud adferant . . . comperisse**: the reading here has been the subject of much dispute. V. crit. n. 21. **habuerint compertum**; R. 1402, r. 559.

XLVI. 128.—23. **Nam**, explained in crit. n. above referred to. **probandum est**: v. Glossary. 24. **notationes**: subscriptiones, § 117, l. 22 n.; *de Rep.* iv. § 10, genus id hominum . . . tribu moveri notatione censoria voluerunt. 26. **flagitium rei militaris** = f. in re militari admissum,' 'a gross breach of military discipline.' The gen. is one of *relation*, being equivalent to a prepositional phrase. Cp. n. on § 1, invidia iudicii Juniani. 27. **sortito**: cp. n. on *consulto*, § 78; its original force as an abl. abs. is apparent here, 'after drawing of lots.' V. Ry. *Rom. Ant.* p. 396, for the punishment of *decimatio*. So *vicesimatio* (*centesimatio*). 29. **delectu dignitatis**: the gen. is similar to that in l. 26—'in appointing *to* high rank,' viz. to a seat in the senate. Cp. end of § 119, where *dignitate* is parallel to *in curiam reditus*. 30. **qui convenit**, 'must it not be incongruous?' lit. 'how is it appropriate?' The idea of *convenire* is that one thing squares with or matches another: *de Fin.* ii. § 32, qui convenit ab alia voluptate dicere naturam proficisci, in alia summum bonum ponere; Sall. *Catil.* li. § 24, qui convenit in minore negotio legem timere, cum eam in maiore neglegeris? 'What consistency can there be in respecting the law in a lesser matter, when you have ignored it in a greater?' Then the idea of *inconsistency* passes into the general idea of *unreasonableness*. For the passage beginning **nam miles** v. crit. n. on l. 33, where there is a variant *ne . . . delinqueret*. Even with the latter reading **tenuit** and **pertinuit** must not be taken as aorists: the pres. *potest* is against this: a general truth is stated. 'For the soldier

who has not stood to his post but quailed before the furious charge of the foe, may notwithstanding turn out afterwards a better soldier . . .' 32. **idem** has strong adversative force sometimes, especially when in apposition to the subject of the sentence. The identity of the agent heightens the contrast of the actions. So Hor. *C.* ii. 10. 15, informes hiemes reducit | Iupiter, idem | summovet. Cp. § 112, procedit saepe longius quam si *idem* ille esset cum isdem suis vitiis nobilissimus, where the contrast is between vitiosus et ignobilis and vitiosus et nobilis : also § 92, § 137. Sometimes the force of *idem* is merely augmentative, like *etiam* : Hor. *C.* ii. 10. 22 ; *de Off.* i. § 43, nihil liberale quod non *idem* iustum. 33. **amplior** : v. crit. n. for the meaning.

129.—**Page 49**, l. 3. **censor** is secondary predicate, not voc., as the older edd. understood it. 6. **velis** can only be justified as a potential subj. 'as you may wish': Lamb. and Orelli were perhaps right in emending it *voles*. It must not be explained, with Class., as due to *ut = utcunque*. The indic. is used with indefinite rel. adjectives and adverbs : the only real exception being the use of *plup.* and sometimes imperf. subj. in Livy and later writers to denote cases frequently occurring ('whenever') : R. 1716, r. 721. But in other cases, if the subj. ever occurs, it requires some special explanation : *e.g.* Plaut. *Trin.* 436, di duint tibi quaequomque *optes* (by *attraction*).[1] Contrast *Phil.* ii. § 118, mecum uti *voles* (sc. redibis in gratiam) : 'be reconciled to me or not, as you like.' 7. **vidente** : v. Glossary. 9. **quemquam**, 'any single citizen (not to say more than one or two, *plures*)' : emphatic by its position. 12. **praefectus moribus** : cp. n. on § 119, l. 19. **magister veteris d. et s.**, 'a graduate in the stern school of ancient virtue.' 16. **condicionem** : v. Glossary. 20. **factum esse oportuit** : the use of the perf. inf. after *oportet* is confined to the Comic poets and Cic., and seems to have been colloquial. Its use after verbs of *desiring* (especially *volo*) is analogous, and is also seldom to be found in authors other than Cic. and the Com. poets. Cp. § 90, accusatum oportuit (note and reff.). Originally the tense of the inf. had its full meaning of *completed action* : cp. § 13, filium interfectum cupit. But in cases such as this it is indistinguishable in translation from the pres. inf., though it may lend a tone of impatience or peremptoriness to the expression. This usage is commonest in the passive voice, the auxiliary *esse* being generally omitted : *Verr.* ii. 4. 37, signum ablatum non oportuit ; *Catil.* ii. § 27, illos . . . monitos etiam atque etiam volo. We may also cp. the use of the past part. with *opus* in such expressions as properato opus est. R. 1371 a and d, 1256 ; r. 545, 541 b. **sortiri . . . committere**, 'to ballot for punishment, and so to submit a question of criminal conduct to the arbitrament of chance': **et** is explanatory, as so often after *multus* : multi et graves dolores, 'many severe pains.' Cp. § 2, altera pars et ea quae, cet. 22. **in**, 'in the case of' : *i.e.* 'where the offenders are many.' Cp. n. on § 32, in eadem iniuria.

[1] V. Kühner, ii. 2. p. 788.

XLVII. 130.—25. **ventum . . . quaesitum**: cp. § 77, omnes . . . ventos colligere, with n. The picture is that of a yachtsman shifting his sails to catch any breeze that he can. 29. **illa iudicia**, senatoria § 61, with n. 30. **notatione tabellarum**: this 'marking of the voting tablets' had occurred at the trial of Terentius Varro de repetundis, B.C. 75, at which his kinsman Hortensius had defended him, and had kept the bribed jurors to their promises by providing them with tablets so marked or coloured that they could afterwards be identified. Cp. *Divin. in Caec.* § 24, ceratam uni cuique tabellam dari cera legitima, non illa infami ac nefaria; *Verr.* i. § 17, § 40, ut discoloribus signis iuratorum nominum sententiae notarentur: and elsewhere. **erat in iudiciis . . . invidia versata**: cp. § 8, error in hac causa atque invidia versata est. We invert in translating: 'the jury courts had again been the object of violent ill-feeling.' 32. **homines**, the antecedent of **quos** is the accus. case, taken up by **eos**: cp. § 115, ea diligentia quae . . . eadem . . . adhibita est. The subject to **voluerunt** is *censores*: the same subject as to **viderentur . . . reprehendisse.** Page 50, l. 2. **illo ipso tempore**, B.C. 70, date of the censorship of Lentulus and Gellius (v. § 117) and of the lex Aurelia. **illis censoribus**: if *eo magis quod* . . . introduced the reason as a subjective one, *i.e.* as present to the minds of the censors, we should have *essent*, not *erant*, and *se*, not *illis*. But the reason is objective: *i.e.* it is the reason assigned by Cicero on his own authority.

131.—7. **habuisse**, sc. tum cum subscripserunt. 8. **ex . . . subscriptione . . . esse quaesitum**, 'their act . . . had been simply a bid for popular applause and acclamation.' The metaphor is that of a commercial transaction: *ex* (as often *de*) denoting that a draft is made upon a certain fund: cp. *Verr.* ii. 3. 119, delectetur quod tanto plus sibi mercedis *ex* fundo refectum sit. For *quaero*, prop. 'to make money,' cp. § 70, mihi . . . quid quaeretur? **rumor**, here 'applause': cp. n. on rumusculos, § 105. 10. **subscribo**, as we see here, denotes properly the assignment of the reason for the *nota*, not the affixing of the *nota*. V. on this § 126, crit. n. on reliquisse subscripserunt. 11. **quo innocentem condemnaret**: on *quo* final without a comparative, v. n. on § 9, where it is similarly used. 12. **divinationis**: cp. n. on § 97. 14. **ut nihil dicam**: a final sentence, giving the purpose not of the action itself, but of the mention of the action. Cp. n. on § 85, l. 18; R. 1660, r. 690.

132.—16. The terms are chosen significantly: **condemnat . . . iudicat**, 'finds a *true bill* against P. . . . gives his *verdict* (if you will have it so)': as if a *subscriptio* were a *iudicium*. 17. **Negat hoc Lentulus**: as we said in n. on § 122, the formal co-operation of both censors was necessary in order that the *nota* might take effect. The case of Popilius, as here represented, is not inconsistent with this: both censors removed him from the senate, though giving different reasons in their *subscriptiones* for the proceeding. There is an exaggeration contained in *negat*: Lentulus had

not expressed an opinion either one way or the other. 18. **quod erat libertini filius**: from the time of Appius Claudius the censor (B.C. 312) the *grandsons* of freedmen ceased to be ineligible for office and for a seat in the senate; not so the *sons* of freedmen. (Thus in the *Fasti* the names of a magistrate's father *and grandfather* are all but invariably given, *e.g.* L. Cornelius Gn. f. Gn. n. Scipio: a slave-grandfather could not be named). Cp. Hor. *Serm.* i. 6. 20, censorque moveret | Appius, ingenuo si non essem patre natus. But the old predilection for one whose family was *freeborn* for at least two generations back still remained. (This is Mommsen's view, after Suetonius: most supposed that Appius admitted freedmen's *sons*: v. *Röm. Staatsr.* i.² 459, 460.) 19. **locum quidem . . . liberat.** This is an early instance of the bestowal of those *ornamenta* ('insignia of fictitious' or titular 'magistracy,' as Momms. calls them), which generally, like the *ornamenta triumphalia*, gave much more of the show of power than of its substance, and were therefore in later times a frequent mark of imperial favour. They answered variously to different magistracy, being *quaestoria* (as probably in this case), *praetoria*, etc., as the case might be. If a man was a senator, the bestowal of *ornamenta quaestoria*, *praetoria*, etc., would entitle him to take his place among the *quaestorii*, *praetorii*, etc., in the senate; they did *not*, however, count for the realities (quaestorship, etc.), in the *gradus honorum*, or scale of official promotion. If a man was not a senator, they did not confer a seat in the senate: what they did give him was a certain style and certain insignia. At public festivals he might sit among the senators, he shared their banquets, he wore their garb. In the present instance we find them bestowed on Popilius as a consolation for more substantial honours lost by no fault of his own. V. Momms. *R. St.* i.² 440-446, and Gloss. *ornamentum.* 19. **quidem** is adversative, 'but,' 'but at any rate': cp. *Verr.* ii. 4. 72, hoc translatum Carthaginem locum tantum . . . mutarat, religionem quidem pristinam conservabat; also *infra*, § 155, interea quidem . . . **reliquit**: on the tense v. crit. n. 22. 'In giving evidence was very particular to praise.' Cp. § 139, neque pro testimonio dixi. 25. **censoris opinione standum putavit**: 'thought it necessary to hold to the opinion of a censor.' The same construction in § 96, his rebus iudicatis standum; § 122, censorum iudiciis non steterunt. The abl. is local: sometimes the prep. *in* is used: the sense is, 'to take up one's position on something,' *i.e.* 'stand to,' 'affirm it.' V. R. 1172, r. 488. This idiom must not be confounded with stare *ab* aliquo, 'to stand by,' 'on the side of, some one.'

(*b*) THE SUBSCRIPTIO CENSORUM ATTACHED TO THE NAME OF CLUENTIUS.

XLVIII. **133.**—30. **quidem** turns off the point of the objection, as sometimes *et quidem*: 'granted: but . . .' There is a good ex. in *de Fin.* i.

§ 35, torquem detraxit hosti. *Et quidem* se texit ne interiret. At magnum periculum adiit. In oculis quidem exercitus. Cp. n. on *quidem* adversative in last section. An anti-climax: 'not for any depravity, not even for any false step—I will not say faulty tendency—in his whole life.' 31. **sanctior . . . probior . . . diligentior**: cp. § 91, Verres, homo sanctus et diligens. Page 51, l. 2. **pudore**: 'honourable feeling,' cp. § 12, n. **integritas**, 'honesty': cp. Glossary, *integer*. 4. **posse**: v. crit. n. 5. **factum**, 'incident,' 'instance': so Verg. *A*. ix. 79, prisca fides facto.

134.—7. P. Scipio Africanus minor was censor with L. Mummius in B.C. 142. Quint. v. 11. 13, quotes this passage as an instance of 'proof by a contrary example.' Valerius Maximus tells the same story (iv. 1. 10), qui censor . . . centurias *recognoscens* equitum, postquam C. Licinium Sacerdotem *citatum* processisse animadvertit, dixit se scire illum verbis conceptis peierasse. Proinde si quis eum *accusare* vellet, usurum testimonio suo. Sed nullo ad id negotium accedente, 'transduc equum,' inquit, 'Sacerdos, et lucrifac censoriam notam ['think yourself lucky to have escaped the stigma'] ne ego in tua persona et accusatoris et testis et iudicis partes egisse videar': it will be instructive to compare the italicised expressions with the corresponding ones in the text. Notice also how distinct in the censor's mind the preliminary investigation and the consequent sentence (notatio) are from one another: cp. n. on § 126. 8. **in equitum censu**: this was also called equitum recensus, or eq. recognitio: ἱππέων ἐξέτασις, Plut. It must be distinguished from the *census populi*, as being, formally at any rate, a military inspection of a standing force, and not of a mere militia. The knights of the eighteen centuries all passed under review in single file, as their names were called by the crier (*citati*). Each presents himself personally before the censors, leading his horse by the halter; and according as they are satisfied or dissatisfied as to his ability for active service, the condition of his horse,[1] and the number of his campaigns, he is bidden to pass on with his horse or to sell it: or he may be punished by a loss of allowances in case of a slight offence. Unlike the *census populi*, which was held (as a *contio*) in the Campus Martius, the census equitum took place in the Forum. V. Momms. *R. St.* ii. 1. 348, 382, 383; Ry. *Rom. Ant.* p. 73. **clara**: denoting something clearly audible, as in § 23, and Lucr. v. 946, decursus aquai | claru' citat late sitientia saecla ferarum: v. Munro, who quotes Verg. *A*. vii. 141, ter caelo clarus ab alto | intonuit. 9. **contio**: v. Glossary. In this case it is summoned by the censor as a magistrate: any citizen whatever *may* be present: those *must* be present who have to answer to their names. Cp. Varro, vi. 87, tum conventionem habeto qui lustrum conditurus est. The censor, as possessing *potestas* only, but not *imperium*, could not convoke the *comitia*. **possit**, on the tense v. crit. n. **verbis conceptis**, 'in set form,' *i.e.* 'deliberately': concipere formulam is 'to repeat a form

[1] Cp. story from Gellius, § 118 n.

of words after some one.' So *de Off.* iii. § 108, quod 'ex animi tui sententia' iuraris, sicut verbis concipitur more nostro, id non facere periurium est, 'which you have taken an oath "upon your conscience," as our law forms have it, to perform.' 10. **contra dicere**: contra Sacerdotem d.—MAN. Equivalent to *accusare* in Val. Max.; v. first n. on this section. **usurum esse**, 'was free to make use of.' The fut. sometimes conveys a mild command ('utetur' in *or. recta*): especially in the second person: *ad Att.* xv. 15, curabis igitur et, si quid tibi de eo videbitur, scribes. 12. **equum traducere**, 'to lead past': non enim adimere equum voluit, contra quem nemo diceret.—MAN. 14. **si hoc Habito facere licuisset**: best explained, with Manutius and Ry., 'if Habitus *had been treated* by the censors as Sacerdos was—had not been stigmatised when there was neither accuser nor witness forthcoming against him.' *Facere*, vicariously used, may even take the place of verbs such as *esse* and *pati*: v. L. and Sh. *facere* ii. E, and cp. Hor. *Serm.* i. 1. 64, quid facias illi? iubeas miserum esse, libenter | quatenus *id facit*, *i.e.* miser est. So here *hoc facere* = τοῦτο πάσχειν. Mr. Peterson explains, 'if he had been accorded the privilege of defending himself'; apparently taking it as = 'to do this.' But Sacerdos had not 'defended himself.' 15. 'Might easily, even with the censors for his judges, have countervailed groundless insinuations and the prejudice which demagogues had set on foot.' For this sense of *populares* cp. *Sest.* § 114, videtis populum ipsum . . . iam non esse popularem, qui . . . eos qui populares habentur respuat: and *supr.* § 113 n.

VIII. EIGHTHLY: THE WILL OF EGNATIUS.

135.—18. **elogium** here = 'a clause in a will.' Properly it denotes any 'short saying' (*elogiare* = 'describe briefly'): so *de Fin.* ii. § 116, elogia monumentorum, 'epitaphs.' Ry. quotes Pl. *Merc.* 403, impleantur *elogiorum* meae fores carbonibus, 'amatory compliments' chalked by a lover on the door of his mistress. We find it often mis-spelt *eulogium* or *eclogium*, as though it came directly from the Greek. '*Elogium* autem nec Latina nec Graeca est sed barbara et purgatis auribus respuenda,' says Lamb. warmly. But probably it has no connection with λογος, and belongs to √*lak* in ἔλακον *loqui locusta*: or (according to Curtius) is for ἐλεγεῖον. 19. **videlicet**, ironical. 22. 'I will not speak further: (I will merely say this:) the very will,' etc. 23. **eius modi est, ut** . . ., cp. n. on § 8, l. 21. 25. **alienissimos**)(proximos. **consideres** depends on **censeo**, cp. § 30, l. 21, n.; § 6, l. 30, n. **censorium** = *censorum* in sense: v. crit. n. **Sed tu Acci**, cet. This is a good instance of the dilemma: as such Quint. v. 13. 33, refers to it, 'Quid tam videre potest contra Cluentium, quam censoria nota? quid tam contra eundem, quam filium ab Egnatio corrupti iudicii, quo Cluentius Oppianicum circumvenisset, crimine exheredatum? At haec Cicero pugnare invicem ostendit. *Sed tu Acci*,' cet. If the sentence of Egnatius carries weight,

then that of the censors who ejected him is worthless; if the sentence of the censors carries weight, then that of Egnatius is worthless, for the censors left his son in the senate and ejected himself. 30. **censoria subscriptione,** (*a*) best taken 'with a censor-like notification of the why and the wherefore' (P.). Egnatius plays the censor to his own son. Cp. the use of the adj. in § 129, minime censorium est, 'is not the thing for a censor'; *de Or.* ii. § 367, opus censorium, 'a case for the censors'; and Sen. *Ep.* 123. 10, alienae vitae *censores*, metaphorical. (*b*) But *censoria* may = *censorum*, the abl. being one of cause: 'whom his father disinherited in consequence of the note of the censors.' This abl. however is generally used to denote an internal cause or motive, as in Verg., neque ipse manus feritate dedisset (*A.* xi. 568): not an external cause, which requires a preposition except in certain cases: besides one or two instances of *ea re*, Draeger only quotes two cases of the simple abl. of external cause from Cic.: *de leg.* iii. § 15, regale civitatis genus . . . regis vitiis repudiatum est; *Phil.* i. § 30. We may add § 35, *supr.*: *obtestatione viri*, where v. n. R. 1228, r. 501.

IX. Ninthly: A Senatus consultum referring in general terms to the Junianum iudicium.

XLIX. 136.—32. The senate might, in the case of some exceptional offence for the punishment of which the law did not expressly provide, pass a resolution that a special commission should be appointed to deal with it: 'ut extra ordinem de facinore quaereretur': if the people ratified this resolution, a special bill was brought in to regulate the trial. Ry. refers to the measures adopted after the death of Clodius for the impeachment of Milo, B.C. 52 (Ascon. *argum. pro Milon.*; Momms. iv. 2, p. 325): Pompey, named sole consul at the instance of the senate, by his law 'de vi' constituted a special *quaestio* for the trial of Milo. The Varian *quaestio* which tried the adherents of Drusus, B.C. 90, and that which tried the accomplices of Jugurtha, B.C. 109, were similar: except that they were not established at the suggestion of the senate. In the present instance the senate suggests, but the magistrates do not act upon the suggestion. 33. **Suscepit causam**: contrast **causam recipere**, § 68 with note. **An** has its proper force here: it implies the needlessness of the previous remark—'(Was it not compelled to take it up?) *or* could it have refused . . .' *An* is almost equivalent to *num* here: cp. n. on § 99, nescio an: and v. R. 2255, r. 888. Page 52, l. 4. **potuit nihil decerni,** 'was it possible to abstain from resolutions?' 5. **sine periculo rei p.**: cp. § 118, sine huius periculo, with n. 7. SI QUI SUNT, cet. Some have supposed, on the ground of statements in the *Digest*, that the lex Cornelia de falsis (for which v. § 125 n.) contained a clause against any person who took *or gave* a bribe in a criminal case. The present passage makes against this view. It was necessary, we see, for the senate to call for a special court of

nquiry into the conduct of those who were suspected of bribing jurors. (Cp. n. on l. 32 *supr.*) Whereas the case of those who had *taken* bribes was covered by the lex Cornelia de sicariis et veneficis and lex de repetundis. The argument of Zumpt, that this resolution of the senate threatened the latter class, and not the former, because C. Junius found himself imperilled, cannot go for much. Any investigation of the facts was presumably dangerous to him in its ultimate, even if not in its immediate, consequences. There was therefore no existing statute which dealt (expressly and without distinction of persons) with the offence of those who had bribed. In two ways only could justice be set in motion against them. The offender might (as in the case of Cluentius) be accused under the sixth chapter of the lex Cornelia de sic. et veneficis : but here a non-senator might escape on the technical plea. Or the senate might call for a special inquiry against him. (Cp. Fritzsche, *Sull. Gesetzg.* 25.) Mr. Roby, however, thinks that this *s.c.* was directed against all who took part in corrupting a jury : cp. the language used of C. Junius in § 92 : and that therefore there is no clear inference from this to the contents of the *lex Cornelia.* 8. 'Is this, upon the face of it, a decision of the senate that the offence has been committed, or an expression of its grave displeasure in the event of its having been committed ?'

137.—13. **istam legem**, the law which ought to have been proposed, but was not : *istam* is malicious, 'your law' which is not forthcoming. 14. B.C. 74, coss. L. Licinius Lucullus, M. Aurelius Cotta ; B.C. 73, coss. M. Terentius Varro Lucullus (frater germanus L. Luculli), C. Cassius Varus (Zumpt). 15. **in quos . . . decreverat**, 'on whom the senate had devolved the same duty by decree.' The consuls should have moved the appointment of a *quaestio* in accordance with the suggestion of the senate. The construction *decernere in aliquem* is not found elsewhere with this meaning. 17. **quod H. pecunia factum esse arguis** is the subject to **factum est . . . illorum aequitate**, as the chiastic arrangement and the virtual repetition of *factum est* shows : thus the clause **ut . . . arbitrarentur** is appended as an explanation of the subject. The sentence **neque id . . . confirmas** is thrown in, attached loosely to *quod . . . factum esse arguis* : Cic. might have written *neque . . . confirmas* instead, carrying on *quod . . . factum esse* as object. Similarly a relative is sometimes continued in a second clause by a demonstrative or personal pronoun, especially where the case changes : as in Hom. *Od.* ix. 19, *εἴμ' Ὀδυσεὺς Λαερτιάδης, ὃς πᾶσι δόλοισιν Ἀνθρώποισι μέλω, καί μευ κλέος οὐρανὸν ἵκει* : and S. Matt. iii. 12, 'whose fan is in his hand, and he will throughly purge his floor.' **ulla tenuissima** = *ulla vel tenuissima*, which Lamb. read (v. crit. n.). Cp. *de Fin.* iii. § 3, quod nemo *mediocriter doctus* mirabitur ; *Verr.* ii. 3. 74, nunquam Agyrinensis contra *quemquam infimum* civem Romanum dixisse ; and Madv. n. on *de Fin.* l.c. 20. **id** takes up the preceding *id* : cp. § 17, si *hoc*, quod in communibus hominum sensibus . . . infixum est, *id* ego . . . non viderem, with

note. **referendum**: v. crit. n. on the use of the word here. 16-21. **quod tu . . . arbitrarentur**: 'what you allege to have been effected by the money of Habitus, without adducing the faintest shadow of suspicion in proof of your assertion, was due in the first place to the fairness and sagacity they displayed in their consulship: they thought that they need not afterwards submit to the people a decree which the senate had passed for the sake of quenching the flames of a momentary prejudice' (P.). 21. **deinde** answers to **primum**, l. 18 *supr.*, the action of the Roman people corresponding with that of the consuls. 22. **fictis**, 'hypocritical': cp. § 72, illos eius fictos simulatosque vultus. 23. **idem**: adversative, as in § 128, miles qui locum non tenuit . . . potest idem postea . . . miles esse melior. 24. In both Greek and Roman law-courts the accused might eke out his defence by every method of appeal to the compassion of his judges. In the farcical trial of the dog in the *Wasps* of Aristophanes, its puppies are produced to excite the pity of the court by their 'whining prayers and tears,' l. 977. Cp. also the use of mourning garb by the accused, § 192. V. Mr. Heitland's excursus 'on the spirit of Roman trials' in his *pro Murena.* **maximo clamore et concursu**, 'in crowded and uproarious meetings.' Cp. Auct. *B. G.* viii. 29, magno clamore discursuque.

138.—26. **ut mare . . . agitari atque turbari**, an attraction for the finite form of the verb. Cp. § 171, ut existimemus illum . . . plures illic offendisse inimicos quam hic *reliquisse*: and § 117 for another form of attraction. **ut mare . . .** The commentators quote a very similar sentiment from Liv. xxviii. 27. 28. **placatum**: adjectival: so *Quir.* 2, si mihi tranquilla et placata omnia fuissent.

X. Tenthly: Cicero's own former utterances.

L.—30. A list of the previous utterances of Cicero, which have a bearing on the present case, may be useful: most of them will be found quoted in the Notes and Introduction—*in Verr.* i. § 29, i. §§ 38, 39, ii. 1. 157, ii. 2. 78-79; *pro Caec.* §§ 28, 29. 'Trials which had not given satisfaction': v. Gloss. *probo.* 31. **ex oratione nescio qua, quam meam esse dicebat.** Ry. supposes this speech to have been the First Action against Verres, the words quoted being those of §§ 38-40, cognoscet ex me populus Romanus quid sit quod iudiciis ad senatorium ordinem translatis . . . P. Septimio senatore damnato . . . lis aestimata sit eo nomine, quod ille ob rem iudicandam pecuniam accepisset, cet. Quo me tandem animo fore putatis, si quid in hoc iudicio intellexero simili aliqua ratione esse vexatum? Page 53, l. 1. **commemorationem cum aliorum iudiciorum . . . tum illius ipsius iudicii**: 'a special mention, among other trials . . . of this very trial before Junius.' *Cum . . . tum . . .*, constantly co-ordinate the individual with other members of its class, in such a way that the former is distinguished by the mere fact of its later mention;

'not only . . . but also . . .': as in Greek ἄλλως τε καὶ . . . = 'especially.' Cp. *Sest.* § 2, in quo cum multa sunt indigna, tum nihil minus est ferendum . . . quam quod . . ., 'outrageous as this is in many other ways, the most intolerable part of it is, that . . .' V. crit. n. on *cum aliorum.* 2. **proinde quasi . . . dixerim**: it must be observed that sentences of comparison with *quasi* and *tanquam* follow the ordinary laws of sequence of tenses, unless it is necessary to bring out the *unreal* character of the supposed case: *de Fin.* v. § 42, parvi primo ortu sic iacent, *tanquam* omnino sine animo *sint*, contrasted with *ad Fam.* ii. 14. 1, eius negotium sic velim suscipias, *ut si* esset res mea. So we may have the perf. (as here) or the pluperf., in primary time. 5. **populare**, 'generally canvassed,' 'in every one's mouth,' equivalent to *populariter agitatum* (v. *infr.*).

139.—6. **neque cognitum commemoravi**, 'did not found my remarks upon any personal investigation.' 7. **pro test. dixi**: cp. § 132, pro testimonio . . . laudat. **temporis**, 'the exigencies of the time.' Sometimes almost = *periculum*: *Vatin.* § 2, si in tanto hominis periculo et tempori eius et voluntati parere voluissem; *Verr.* i. § 33, ex istius tempore et causa, 'to suit the exigencies of your client's case.' 10. **offensiones**, v. Glossary; **off. iudiciorum**, 'handles against the courts,' prop. causes of offence *given by* the courts (subjective gen.). The plural of abstract substantives (especially those denoting mental affections) is used to denote (*a*) the *occasions of* the exercise of the affection, *e.g.* *laudes*, 'praiseworthy deeds' (*laus* = praiseworthiness), formidines, amores ('the beloved object,' always plur.) libidines; (*b*) the *expressions* of the affection in question, *e.g.* dolores, gaudia ('expressions of pain, triumph'), audaciae, furores ('deeds of boldness, frenzy'). But often the plural of these verbs is only intensive, as animi, spiritus, irae. We have another use again in § 56, conscientias facinorum, on which v. n. 12. **Sed errat vehementer**, cet. This is the least skilful part of Cicero's defence. His previous utterances were directly opposed to his present contention; they might be got rid of in one of two ways: (*a*) by a timid line of defence—a partial admission of their falsity. 'An advocate is not speaking *ex cathedra* (as a responsible statesman does) or on his oath as a witness. The exigencies of the case and time determine his choice of facts. He is bound not to say what he knows to be false; he is not bound *only* to say what he knows to be true.' In fact Cic. might admit that his utterances were *ex re causaque ducta.* (*b*) By a bolder line of defence: that of simple recantation. 'On the question of fact I was wrong, I was misled: but I may now claim credit for a mind open to reason, which I ask the jury to exhibit.' In fact, Cic.'s utterances (he might say) were *non cognita.* There can be little question that the latter (as Ry. says) was the only safe line of apology. The former is double-edged: the jury, if perversely logical, might apply to the present speech the principle which they are invited to apply to previous speeches. Yet Cic. adopts the former of the

arguments, though he works round in § 142 to the latter, which, however, even then he rather toys with than adopts. How can we account for his choice? Perhaps it is best explained by his weakness of character, especially as this appeared in political timidity. In politics (§ 141) *requiritur constantia.* To take the bolder ground would be to confess that the party-cry of B.C. 74-70 rested on facts so called, the most signal of which was untrue. So though the whole contention of the speech is a denial of the truth of that fact, he cannot frame his lips to deny it here in so many words. He dare not confess to his inconsistency. He prefers the glaring sophism of § 139, that 'in his speeches it is not he that speaks, but his client's case personified'! Thus the politician gets the better of the advocate, and the case suffers. Certainly the 'causa Cluentj,' if allowed to speak for itself, would not have chosen this line of defence. A wise advocate would scarcely disclaim all personal conviction as to the argument which he adopts. 14. **auct. nostras consignatas**, 'the certified declaration of my views.' V. Glossary, *auctoritas.* 15. **causarum**, not a mere gen. of connection or possession, 'appropriate to the case and moment': but actually subjective, 'the utterance of the case with its immediate requirements.' The orator is the mere mouthpiece of the case. Thus only can the connection with the next sentence (**nam, si . . .**) be explained. 17. **Nunc**, 'as it is': cp. n. on § 120.

140.—20. **M. Antonius** and **L. Licinius Crassus**, the two most distinguished orators of the generation preceding Cicero's: 'the first a self-taught man, who owed everything to his excellent memory, natural vivacity, and quick imagination, and whose chief merit lay in his brilliant delivery: [omnium eloquentissimus quos ego viderim; *Tusc.* v. § 55:] Crassus, a man of acute intellect and juridical training, hence as an orator less taking than Antonius, but persuasive through his lucid explanations, and winning through merry wit and elegant language' (Teuffel, *R. Lit.* § 139). M. Antonius was grandfather of the triumvir. He was murdered by the followers of Marius and Cinna, B.C. 87. 20. **nullam . . . scripsisse**: cp. *Brut.* § 139, of Antonius, erat memoria summa, nulla meditationis suspicio: imparatus semper adgredi ad dicendum videbatur. 21. **si quid . . . dictum**, 'if there was ever anything which it would be convenient for him not to have said': grata quadam levitate (dictum), quasi quod semel dictum est, perinde etiam non dictum esse posset (Class.) **si quid aliquando**: we find also *si quando quid*, *si quando aliquid*, *si aliquid aliquando*, with no perceptible difference of meaning. V. Mr. Reid on *de Amic.* § 24. 22. **negare dixisse**: for the omission of the subject *se* cp. § 36, l. 1 n.; *Rosc. Am.* § 100, si prodierit . . . scio enim proditurum esse [sc. eum]. 23. **quasi . . . comprehendatur**: cp. § 138, proinde quasi . . . dixerim, with n.

LI.—26. **genere**, 'subject,' the defining gen. *studiorum* or *rerum* being omitted; cp. Prof. Wilkins on *de Orat.* ii. § 4, nostrorum hominum in omni genere prudentiam Graecis anteferre. Sometimes almost = *modus*:

de Orat. ii. § 17, (qui) in aliquo genere aut inconcinnus aut multus est : so in later writers, *e.g.* Sen. *de Benef.* ii. 10. 2, si dare (cogitas), quo genere accipienti maxime profuturum est, dabis. **cum multorum, tum hominis . . .** : cp. § 138, cum aliorum iudiciorum . . . tum illius ipsius iudicii. Here *multorum* = aliorum multorum. Cp. *de Fin.* i. § 18, utriusque cum *multa* non probo, tum illud in primis. 28. **M. Brutus,** nicknamed Accusator (*de Off.* ii. § 50), of whom Cic. writes in *Brut.* § 130, isdem temporibus M. Brutus, in quo magnum fuit, Brute, dedecus generi vestro, qui, cum tanto nomine esset patremque optimum virum habuisset et iuris peritissimum . . . magistratus non petivit sed fuit accusator vehemens et molestus. 30. **recitatores,** called *lectores* in *de Orat.* ii. §§ 223, 224, Quint. vi. 3. 43, 44, where the same story is told. **cum defenderet . . . cum Brutus . . . recitanda curasset** : cp. the similar repetition of *si* in § 6, with n. : the former clause gives the circumstances in general, the latter the proximate circumstances, which qualify or condition the main statement, *esse commotus dicitur.* 32. Narbo Martius, capital of the province of Gallia Narbonensis (in S.E. France, between the Cevennes and Alps, answering to the provinces of Languedoc, Dauphiné, and Provence), was colonised by the consul Q. Martius Rex, B.C. 118, and was the first transmarine colony with citizen-rights. The senate opposed its foundation. Ry. quotes *Font.* § 13, est in eadem provincia Narbo Martius, specula populi Romani ac propugnaculum istis ipsis nationibus oppositum et obiectum. **Page 54,** l. 1. The lex Servilia of Q. Servilius Caepio, B.C. 106, was a proposal to restore the jury-courts to the senate (cum Serviliae leges senatui iudicia redderent; Tac. *Ann.* xii. 60) : which failed, the senate not recovering this privilege till the dictatorship of Sulla, B.C. 81. Ry. *Rom. Ant.* p. 293 ; Momms. *R. H.* iii. 185, 186. 2. **ea oratione,** the latter of the two speeches. 3. **illorum iudicum** : equites, whose order held the *iudicia* at the time. **quo,** final without a comparative : cp. § 9, quo inimicum innocentem . . . condemnaret, with n.

141.—5. **ratio,** 'the requirements'; v. Gloss. 8. **lepore . . . facetiis,** 'wit,' 'brilliancy.' In their origin the words are not dissimilar: *lepos* (from √*lap* in λάμπειν, Ὀλυμπος) originally meant *glitter* : *facetiae* (√*bhak* in *fax*) meant *brilliancy* (as that of 'fireworks'), so *sparkling conversation.* They are coupled in *de Orat.* i. § 17, *lepos* and *sal* in *ib.* ii. § 98. *Lepos* seems here to denote 'wit'; *facetiae* 'humour' or 'playfulness' as a pervading quality. A similar distinction is that drawn by Cic. himself between *facetiae* and *dicacitas* (*Orat.* §§ 87-90) : the former consists 'in narrando aliquid venuste,' the latter 'in iaciendo mittendoque ridiculo' : the former is 'maioris artis,' the latter 'acrioris ingenii.' Cp. the judgment of Hor. on Vergil,

molle atque *facetum*
Vergilio annuerunt gaudentes rure Camenae
(*Serm.* i. 10. 44)

with the criticism of Quint. vi. 3. 20. We must not, however, expect to find the words *lepos* and *facetiae* consistently distinguished: in *de Orat.* ii. §§ 218, 220 they are synonymous. 9. **ipse**: v. crit. n. 10. **illius accusatoris**, 'of "the Prosecutor" Brutus;' v. n. on § 140. 12. **ruri**, a locative: cp. domi, humi, Carthagini, R. 1168, r. 485. 17. **nequitia**, 'extravagance.' 19. **quod si potuisset . . . non praeterisset**: this is a transition for the nonce to *oratio recta*. Cp. the converse in § 61, l. 19, n. on *quod . . . voluisset*: and § 154, *quibus in rebus . . . voluerunt*, a transition to *or. recta*. **honeste**, 'with propriety.' Ry. quotes *de Off.* i. § 129, nostro quidem more cum parentibus puberes filii, cum soceris generi non lavantur. **id aetatis filio**, 'a son of that age': an acc. of duration of time used attributively. So id temporis, 'at that time.' R. 1092, r. 460. 21. **libris . . . tabulis . . . censu**: 'the *books* of Brutus in a literary sense, his *books* in a mercantile sense, the registration of his property, the *books* of the censor.'—Ry. 20. The use of the *balneum* (**balneae**) instead of the simpler arrangements of earlier times came in with other Hellenising fashions; the word itself is Greek, *βαλανεῖον*. The sing. generally denotes a *private* bath, the plur. a *public* one, but neither use is invariable. Public baths were erected by the community, or else (as those of Brutus) by a speculator, and then let out to a lessee; they were under the supervision of the aediles. Other instances of baths belonging to speculators are the b. Seniae (*Cael.* § 61), b. Pallacinae (*Rosc. Am.* § 18). V. L. and Sh. *balneum*; Momms. Marq. *Röm. Alt.* vii. 1. p. 265. 22. **ultus est**, 'chastised.' *De Orat.* ii. § 223 gives us a similar gibe, cum ille (Brutus) diceret se sine causa sudare, 'minime mirum,' inquit, 'modo enim existi de balneis': *i.e.* 'no wonder you are perspiring, for you have just left (*i.e.* parted with) your baths.' 25. 'In which perhaps consistency is more required': magis quam in meis, quae de re publica non sunt.—MAN.

142.—25. **Ego autem . . .**: cp. n. on § 139, *sed errat vehementer . . .* Cic. is anxious, from a consciousness of the weakness of his position, to dissociate it from politics. 28. **oneris**, 'responsibility': **ista** gives a good sense, 'the expressions which you quote against me'; cp. crit. n. 31. **fuisse in illa opinione populari**, *i.e.* 'that I accepted the current opinion as my own': a larger admission than he professed himself ready to make in § 139, non ex *mea* opinione sed ex hominum rumore. 33. **ab initio**, '*at* the beginning': cp. Tac. *Ann.* i. 1, urbem Romam *a* principio reges habuere: and the use of *unde* in such passages as Hor. *Epod.* v. 85, dubius unde rumperet silentium, 'with what words,' lit. 'starting from what.'

II. Second Division of the Case.—Cluentius will not rely on the merely technical defence with which the letter of the law might supply him as an Eques.

LII. 143.—Page 55, l. 6. **opinionem . . . quod existimaris**: this redundancy of expression is common in the case of verbs of thinking and believing: so *Verr.* ii. 2. 185, cogitate . . . quid ex ceteris locis exportatum putetis. Also § 150, *infra*, recusavit ne se putaret uti oportere. Cp. Reid, Cic. *Cat. M.* § 32. 15. **ita defendisse . . . ut**: cp. n. on § 49, l. 20: 'have I, think you, in defending the case, so much as mentioned the law from beginning to end?' 17. 'As far as man ought to assert': thrown in to soften the egotism of the assertion. **Hominem** (L. and Sh. *homo* I. B. b), 'man as a fallible being' (P.). Cp. quod timide dicam, § 52. 18. **istius invidiosi criminis**: cp. n. on ista multa iudicia, § 88.

144.—21. **utor instituto meo**, 'I am true to my habitual practice': cp. *ad Att.* ii. 19. 3, ego neque pugno cum illa causa . . . neque approbo . . .: *utor via*, 'I keep to the highroad.' Cp. also § 199, vetere instituto, 'according to ancient practice.' 23. **consilio** answers to **prudentis**: **voluntati** to **honesti**, which = 'respected, and therefore content to rest his case upon its own merits, not upon legal questions.' Cp. inter suos et honesto et nobili, § 11. 25. **ad quas adhibemur**, 'which we advocates are retained to expound.' 26. 'From the clause of the law which says, "whosoever shall have conspired to procure a verdict of guilty."' The reference is to the Sixth Chapter of the lex Cornelia de sicariis et veneficis. As to the question whether Cluentius was actually impeached under this chapter of the law, as well as under that which related to poisoning, consult Introd.

145.—33. **neque enim** gives the reason, not for the fact stated ('I did so'), but for the fact of its statement by Cic. Cp. § 70, n. on nihil enim est. Page 56, l. 3. **dignitatis**: v. Gloss. 4. **Quod si nihil** *sqq.*: Ry. begins chapter liii. here: v. crit. n. 5. **perorassem**: v. Gloss.

LIII.—6. **illa oratio . . . quod ait Accius**: cp. § 143, opinionem . . . quod existimaris, with n. 7. **indignum facinus**, 'a monstrous thing.' *Facinus* in the sense of thing, 'circumstance,' is common in Plaut.: with *indignum* it appears sometimes, as a colloquialism, in Cic. not only in letters (as *ad Att.* ii. 13 *init.*) but in speeches: *Verr.* ii. 5. 113 f. esse i. plus mulieris apud te savia quam lacrimas matris valere; *Sest.* § 108, indignissimum f. putavit illum . . . vivere ac spirare. So ἔργον, especially in Hom., who even calls a big stone μέγα ἔργον, *Il.* v. 303.

146.—9. **Ut**, concessive: R. 1706, r. 714 d. V. § 150, ut . . . confitear. 10. **videro**, 'used in all the persons to put off the consideration of a question,' leaving it to some one else (or one's-self): as often in Plaut. and Ter., there is little or no difference of meaning from the simple future.

Cp. *Phil.* ii. 118, sed de te tu videris (v. Mayor), 'it is for you to consider your own interests.' This use is 'in post-Comic writers almost confined to *videro*.'—R. 1485, 1593, and pref. cvi, cvii; r. 609. 5. 667 (c). 11. 'In a state which rests upon the support of law to depart from law.' Cp. *de Off.* ii. § 58, rei publicae quae salute nostra continebatur. 12. **discedi**, impersonal: Lat. has no word co-extensive with Eng. 'one,' Germ. *man.* **hoc**, and below **hic**: cp. si haec solutio . . . est, § 34 with n. 'It is the bond which secures our honourable position in the commonwealth, the charter of our liberties, the fountain-head of justice.' 13. **dignitatis**: v. Gloss. 14. **mens, animus, consilium, sententia**: 'mind, soul, judgment, convictions.' We must not look for exact psychology in an orator: the words are used in their popular sense, *mens* denoting the reasoning faculty, *animus* the acting or motor force of will, passion, etc. *Consilium* is the expression of *mens*: *sententia* of *animus*. So Verg. uses *mentem animumque* (*A.* vi. 11) to answer to Homer's *κατὰ φρένα καὶ κατὰ θυμόν*. 18. **interpretes**: v. Gloss.

147.—20. **Q. Naso**: no doubt identical with the Q. Voconius of § 148, and *iudex quaestionis* presiding in the court in which Cluentius was being tried. Ry. rightly rejects (in his Introd. § 9) the opinion of Mr. Long, that the two were distinct persons, Q. Naso being praetor and Q. Voconius iud. quaestionis: they could not have appeared in court together. Cp. n. on the office of *iud. quaestionis*, § 89, and n. on § 148. **quid est cur sedeas?** The subj. is consecutive, as in the expressions *quid est quod . . .*, *nihil est quod . . .*, *est qui . . .*, *nemo est quin.*—R. 1680, r. 702, 704, 706. 25. **scribae**, 'clerks,' in attendance on the *praetor* or president of a court, and employed to draft records, and read aloud any necessary documents. **lictores**: from this passage we see that the *iudex quaestionis inter sicarios*, like the praetor, had lictors in attendance: probably only two, for this number attended the praetor urbanus. **apparere**, 'are in attendance at': cp. the subst. apparitor, and the meaning of parere, 'to obey.' It is a technical term, and is especially used of the lictor proximus (who 'stations himself within call,' last in the file, next to the magistrate). By an ancient rule, no one save the young son of the latter was allowed to pass between him and the lictor. Cp. Liv. xxviii. 27, lictor apparuit, summoto incesserunt, fasces cum securibus praelati sunt. (Sall. *Iug.* xii. proximus lictor.) V. Momms. *R. Staatsr.* i.[2] 318, 334, 360, 368. 27. **mente quadam legis**, '"a kind of mind, viz. law," *legis* being gen. of definition' (P.). Not as Orell. and Weiske, gen. of possession, '*mente quadam, legis*, sc. mente.' Beware of translating 'by the spirit of law.' Tr. 'is under the direction and control of an intelligent principle, as it were, that is, of law.' The gen. as in *virtus iustitiae*, R. 1302, r. 523 a. 29. At this time (B.C. 66) the eight praetors would have eight jurisdictions: the praetura urbana, p. peregrina, the quaestio repetundarum, q. ambitus, q. peculatus, q. maiestatis, q. falsi, q. de sicariis et veneficis. The last

was a very busy court at this corrupt time (v. § 89 n.), and we gather from this section that it employed, besides its praetor, three iudices quaestionis, Naso, Plaetorius, Flaminius. V. M. *R. Staatsr.* ii. 1. 192, 574. Also v. for *inter sicarios* § 21 n., Ry. *R. Ant.* p. 305; for *peculatus*, 'embezzlement of public moneys,' Ry. *ib.* p. 307; for *repetundae*, Ry. *ib.* p. 306; for *ambitus*, Ry. *ib.* p. 308: and Gloss. *quaestio*. 30. For **C. Orchivius** v. § 94. **mea**; it must be remembered that Cic. was praetor in this year, B.C. 66. 31. **ambitus causa**: v. crit. n.

148.—**Page 57,** l. 1. **te lege pec. repet. non teneri,** *i.e.* as being an eques: v. § 104, qua lege in eo genere a *senatore* ratio repeti solet, with note. (*Rab. Post.* § 12, qua lege? 'Iulia de pecuniis repetundis,' quo de reo? 'de equite Romano': at iste ordo lege non tenetur: 'immo illo capite QVO EA PECVNIA PERVENERIT.') But according to Zumpt's view (v. § 104, foot-note), Accius would claim exemption as holding no official position.

LIV.—5. **quid agatur,** 'the issues at stake,' 'the object in view': cp. § 145, quod si nihil aliud esset actum nisi ut . . . ; § 3, agitur Cluenti periculum. 6. **lex ea, qua lege**: on the repetition of the antecedent, especially in juridical formulas v. § 49, n. The 'law' is the lex Cornelia de sicariis et veneficis: v. Introd. 7. **iudicem quaest.**, n. on § 89. Cic. is quoting from the law, adding his own comments, and substituting *iud. quaest.* for 'praetor iudexve q.'; Voconius not being a praetor, and no praetor being present; v. n. on § 147. 9. **infinitum,** 'perfectly general,' 'applicable without distinction of persons.' 10. **Recita**: he is speaking to the Scriba. 11. **quid eadem lex statim adiungit?** he turns to the sixth chapter of the law, which deals with judicial corruption, and applies only to a certain class of offenders, is in fact no longer 'infinitum.' 13. **trib. mil. leg. quattuor primis.** In republican times there was no regular standing army: four legions were annually levied from the citizen body to form two consular armies, and disbanded at the end of their campaign, unless further required, as was the case in the Second Punic War, in which at one time twenty-three legions were serving. The legions were numbered: the four regular legions of the year being ranked first. The army did not, as in imperial times, supply young men with a profession, but with a stepping-stone to public office. From the year B.C. 207, the twenty-four military tribunes required for the four 'first legions' ceased to be nominees of the consuls, and were elected by the comitia tributa from the senatorial or equestrian order. The tribunes for any other legions were named still by the consuls. The former tribunes were distinguished from them as *tribuni militum a populo*.—Marq. *R. Staatsv.* ii.^{2} pp. 561-4; Ry. *Rom. Ant.* 380, 381, 386. **trib. mil. quaestor, trib. pl.**: the regular order of the 'cursus honorum' reversed. Cp. lex Acilia repetundarum—ab eo quei dictator consul praetor magister equitum censor aidilis trib. plebei quaestor iii vir capitalis iii vir agris dandis adsignandis trib. militum leg. iiii primis fuerit—as restored in Bruns, *Fontes*, p. 51. The same succession is always preserved.

14. 'Quaestor *or* plebeian tribune.' We have several instances of disjunctive asyndeton (the omission of the copula 'or') in this chapter. Even in archaic Lat. it is rare, while copulative asyndeton (as in 'ruta caesa,' 'minerals and timber') is common. Cic. *Acad.* ii. § 92, interrogati dives pauper, clarus obscurus sit. 15. **nominavit**, sc. lex, as *adiungit* above. The difference of tense is nothing in such a case: the perf. refers to the time of the writing of the law, the pres. to that of its being read. 17. **quo**: n. on § 9. **convenit convenerit quo . . . condemnaretur**: historic sequence of tenses, the standpoint of thought being changed to the date (in the past) at which the 'conspiracy' was made. Cp. *Mur.* § 5, quoted in crit. n. on § 152, si const. sit . . . iudicarint. R. 1510, r. 620. 20. **mortales** = homines, in its most comprehensive sense of 'human being' (end of § 202). A favourite word with Sallust, who also uses it thus in the sing., *e.g.* magnum inter mortales certamen fuit, *Catil.* i. 5 (Mr. Cook's n.). **adligat**: v. Gloss. 23. **nunc**, n. on § 120.

149.—27. **qui tamen . . . noluit**: v. crit. n. 30. **quiddam . . . aliquid**: the latter word implies 'a definite part' as opposed to 'nothing.' Cp. its use in § 113, aliquid fuisse in Fidiculani causa quod idem non esset in ceterorum. Otherwise *quiddam* might have been repeated, cp. § 157, est quiddam quod ad me pertineat. 'Cluentius has of course his share in the case: but I too have mine.' 31. **sua interesse**: the abl. fem. is always used with *interest* and *refert* in the case of personal pronouns: the original expression was perhaps *meae rei fert*, then meae refert, mea refert: *interest* taking the same construction by analogy. V. R. 1285 (r. 519). Page 58, l. 3. 'Can content themselves with my powers as an advocate.' 6. **hoc loco**, 'at this point,' 'in this part of my speech.' So *Sest.* § 119, et quaeso hoc loco iudices ne me . . . ad insolitum dicendi genus labi putatis. Contrast hoc in loco, § 79, 'speaking where I do.' 7. **a me desiderari**, sc. by his hearers. V. crit. n.

LV. 150.—10. **ut . . . confitear**, 'supposing that I were to allow it to be ever so unjust': cp. ut tibi concedam, § 146 *init.*; *Tusc.* i. § 49, ut enim rationem Plato nullam adferret, ipsa auctoritas me frangeret. 11. 'Not that we *are to disobey* these laws now in existence': such is the force of the pres. here, not 'we *do not* obey.' 13. **recusavit ne . . . se putaret uti oportere**: pleonastic expression for 'recusavit ne uteretur': cp. § 143, opinionem quod existimaris, and note; § 154, non hoc recusabant ne ea lege accusarentur. Consult crit. n. on the various readings. 15. **condicionibus**: v. Gloss. 17. **haec omnia . . . commodo compensantur.** The verb *compenso* (prop. 'to weigh one thing with or against another') may mean 'to counterbalance' an evil by a good, being construed with an abl., or to 'make (a good thing) a set-off against an evil,' being construed with *cum*, as in Hor. *Serm.* i. 3. 70:

> amicus dulcis, ut aequum est,
> cum mea compenset vitiis bona,

where v. Prof. Palmer's n. 18. **Converte . . . non perferent** : a good instance of co-ordination (paratactic construction) for subordination (hypotactic). The latter would give us here a conditional sentence : si convertes . . . non perferent. Cp. *Tusc.* i. § 30, tolle hanc opinionem : luctum sustuleris. Other paratactic forms are (*a*) that with the conditional subj., as in Mart. viii. 56, sint Maecenates : non deerunt, Flacce, Marones ; (*b*) that with the indic., Iuv. iii. 100, rides, maiore cachinno concutitur ; Mart. i. 70. 3, quaeris iter, dicam. 20. 'That they ought to be liable to fewer entanglements in the way of statutory rules and principles, and of trials.' Cp. *Sest.* § 88, legum, si posset, *laqueis* constringeret : a favourite metaphor, combining the ideas of restraint and subtlety, the word prop. meaning a 'lasso' used in hunting : laqueis captare feras, Verg. *G.* i. 139. 22. **summum** : v. crit. n.

151.—24. **hanc ipsam legem**, 'quae tunc erat Sempronia nunc est Cornelia,' § 154. A law passed by C. Gracchus and embodied afterwards by Sulla in the lex Cornelia de sicariis. Under this law C. Gracchus had constituted a new *quaestio*. We need not (with Ry.) suppose this lex Sempronia to have been passed before the transfer of *iudicia* to the equites. It probably was directed mainly against the administrative jurisdiction of the senate, by which that body at times, as in the case of the Bacchanalia, might appoint an extraordinary commission to try offences of treason. Momms. (*Hist.* Eng. tr. iii. p. 118) suggests that it may have been identical with the law *de provocatione*, which affirmed anew the principle of appeal to the people. Zumpt, again, supposes that this Sempronian law, providing for the control of magistrates, was not confined to those cases in which the penalty was *capital*; the expression *iudicio circumveniretur* being perfectly general. He supposes Sulla to have adopted it with a limitation to capital cases (*Criminalrecht*, ii. 2. 29-31). 30. **adligare** : v. Gloss. 33. 'He would have concentrated in this single court all the venom of his proscription as he wreaked it upon the former jurors.' The law, as re-enacted by Sulla, dealt with judicial corruption, and still applied to *senatorial* jurors only. Cicero says here that Sulla would have made its action retrospective, or, in other words, extended its application to the equites, had he dared to do so. **proscriptionis** : in which 40 senators and 1600 knights perished.—Appian (*b. c.* i. 95), Momms. *R. Hist.* iii. p. 351 n.

152.—**Page 59**, l. 3. 'The one object in view is to draw the equestrian order into the clutches of this statute.' In this and the two following sections Cic. deals, as well as he can, with the very fair contention of Accius, that all jurors (whether senators, knights, or tribuni aerarii) should be ruled to be upon the same footing of legal responsibility. His reply may be resolved into a positive argument (§ 152, beginning of § 153) and a negative argument (§§ 153, 154). (*a*) The positive argument is as follows : If a clause involving the equites were introduced it would be abused. Senators who are strong in the consciousness of their own rectitude are

willing to allow the equites an immunity in law which they enjoy themselves in fact. It is the unworthy members of the senate who demand the change: those who insist that if any order in the state shall have *carte blanche* to do what it likes, that order shall be their own, expect thus to possess themselves of a threat with which to intimidate the equestrian *iudices* who might expose them. [We may remark that Cic. blinks the fact that iudicia are not composed of equites alone, or senators alone: to make the equestrian jurors responsible is not to make the senatorial jurors irresponsible. As easily, under existing arrangements, might a guilty eques intimidate senatorial jurors. In fact the true conclusion is—the change is demanded by *all* who know the dangers of irresponsible power, no matter to whom committed, but Cic., having confused the issue, hastens on to other ground before this objection can take shape in the minds of his hearers.] (*b*) Negative argument, on the principle of 'quieta non movere.' The balance of power between the two orders still, as in the days of M. Drusus, maintains the equilibrium of the state. 5. **integritate**, 'honesty': cp. § 133, de huius pudore integritate virtute. 7. **cupiditate**, not, as in § 66, 'party-spirit,' but simply 'greed'; sine cupid. = integritate above. V. n. on cupidiore, § 66. **equites ordini senatorio dignitate proximos, concordia coniunctissimos**: these words are interesting as an anticipation of Cicero's political creed enunciated a few years after this time. In the coalition of senators and equites ('causa optima,' *ad Att.* ii. 16. 4) he hoped to find a counterpoise to the growing forces of democracy soon to issue (though Cic. was too short-sighted to perceive it) in Caesarism. Cp. his résumé of his speech made after Pompeius's return from the East: haec erat ὑπόθεσις: de *gravitate ordinis* [sc. senatorii], de *equestri concordia*, cet. 8. **sese volunt posse omnia**: the infin. after verbs of wishing has a pronominal subject (*volo me esse*), when it is desired to throw out the whole idea, thus conveyed, as something distinct and contemplated already as if it were realised: *Arch.* § 10, hic quod semper se Heracliensem esse voluit; Madv. § 389, obs. 4. V. crit. n. 11. **si constitutum sit . . . iudicarint**: v. crit. n. 14. 'To take out the sting of your severity.' The notion that bees leave their sting in the wound which they make is an ancient one: cp. *Flacc.* § 41, mortuus est aculeo iam emisso ac dicto testimonio; and Verg. *G.* iv. 238, et spicula caeca relinquunt | adfixae venis, animasque in volnere ponunt (Mr. Reid on *Sull.* § 47).

LVI. 153.—20. In B.C. 91, the tribune, M. Livius Drusus, attempted to purify the law-courts by two important measures: the *iudices*, instead of being taken from the *equites* alone, were to be chosen from the senate, which was to be enlarged by the admission of 300 equites; and, secondly, there was to be a special *quaestio* for the trial of jurors who *had been* or should be guilty of accepting bribes (Momms. *R. H.* iii. 222). The latter law, being thus retrospective, was fiercely attacked by the *equites*, and was, with Drusus's other proposals, speedily rejected on the ground

of informality. *Rab. Post.* § 16 should be compared: 'potentissimo et nobilissimo trib. pl. M. Druso, novam in equestrem ordinem quaestionem ferenti SI QUIS OB REM IUDICANDAM PECUNIAM CEPISSET, aperte Equites Romani restiterunt. (Ry. quotes as our authorities for this period Cic. *legg.* ii. § 12; Cornel. *fr.* 11 Ascon.; *dom.* 16-19; Liv. *Epit.* 71; Vell. ii. 13; Aurel. Vic. *vir. illustr.* 66; App. *b. c.* i. 35; add Flor. iii. 17.) 22. **nobilitas**: cp. Gloss. and § 111 n. The word is concrete here, = *nobiles*. 24. **robora p. R.**, 'the flower of the R. people,' a military phrase: eum robora virorum sequebantur, Liv. xxii. 6. **C. Maecenas**, probably an ancestor of the C. Cilnius Maecenas, the 'equitum decus' of Horace's day. 27. **repugnarunt cum haec recusarent**: cp. § 143, opinionem quod existimaris, with n. Cp. crit. n. here. 28. **potuisse . . . pervenire si . . . voluissent**: the oblique statement of one of the ordinary forms of conditional sentence. We have the direct form in such sentences as Antoni potuit gladios contemnere, si sic | omnia dixisset, Iuv. x. 123. 31. **splendor**: v. Gloss. 'Grandeur.' **ornamenta**, 'distinctions,' v. Gloss. **quae se non contempsisse**: the 'copulative' relative, followed by the infin. in *oratio obliqua*: R. 1781, 1794; r. 763, 775. **Page 60**, l. 1. **huiusce modi iudiciorum**: cp. crit. n.

154.—2. **integram**: v. Gloss. 3. **id non posset**, sc. fieri: cp. § 51, quod possim, sc. facere. The former ellipse is not uncommon in a general statement, where *potest* is impersonal, or has a neuter pronoun for its subject: especially in the phrases *si posset*, *non potest*, *ut potest*. Probably a conversational idiom: it is frequent in Comedy, *e.g.* potin ut . . ., 'is it possible'? . . . in Cic. we have it, *ad Att.* v. 1. 3, nihil potuit dulcius. V. L. and Sh. *possum*, I. *sub fin.* 5. **ornamenta**: v. Gloss. 6. **praetermisissent**, 'had foregone': so § 42, 'to avoid doing a thing.' The rule that *omitto* = 'give up designedly,' *praetermitto* = 'pass by undesignedly,' will not always hold, at any rate as regards the latter. 12. **sella curulis**, used not only by consuls, praetors, and curule aediles, but by the dictator, magister equitum, and censor. These held 'curule office.' The name is derived from *currus*: cp. equi curules, 'horses for the sacred procession,' Liv. xxiv. 18. V. Rich, *Dict.* sub voc. for its form—like that of our camp-stools. Momms. *R. Staatsr.* i.^{2} 385. **fasces**, used by those magistrates (the greater magistrates, with the exception of censors, curule aediles, and quaestors) who had lictors. Rich, p. 277. **insignia**: v. crit. n. 15. **voluerunt**; we should expect the *or. obliqua* to be continued, with *voluissent*. Cp. n. on. § 141, quodsi potuisset . . . non praeterisset, a much more remarkable transition to *or. recta*. As in that instance Cic. is reporting another person or persons verbatim. R. 1797, r. 778. **non hoc recusabant ne . . .**: 'were not protesting against their being accused under the lex Sempronia.' *Hoc* is explained by the dependent clause which follows. After the negative the construction with *quin* or *quominus* would have

been more natural. The general sense of the passage is: they did not protest against indictment under the lex Sempronia: naturally enough, for it did not concern them. All they wanted was that this law should be left as it was, and not altered to their disadvantage. V. n. on § 151 for this *lex Sempronia.*

155.—21. **condicio**: v. Gloss.

LVII.—23. **quidem**, adversative: cp. § 54, re quidem vera, with note. It opposes *interea*, 'meanwhile,' *i.e.* the time until the law is reformed, to the time of *ut haec . . . perferatur*, the time of its speedy reform. 26. **iniquum**, 'unfair': v. crit. n. **aliud agere**, 'to be otherwise occupied' or 'interested elsewhere': the opposite of *hoc agere*, 'to attend,' a common phrase in colloquial Latin. *Hoc age* (=aliud ne egeris) was the formula with which the priest at a sacrifice commanded the attention of the worshipper. *Alias res agere* (*Rosc. Am.* § 60), or *aliud agere*, was the opposite. Cp. Plaut. *Pseud.* 151, hoc sis vide, ut alias res agunt. Hoc agite, hoc animum advortite. Below, § 179, we have Oppianicum aliud agentem ac nihil eiusmodi cogitantem. 27. **commisisse**: **sine cura esse**: parataxis for *cum commiserit* sine cura esse: the change of tense by itself indicates this. 'Having left the state . . . in your keeping are undisturbed.' We may cp. the tenses in Vergil's description of the Wolf of the Capitol: (fecerat) procubuisse lupam: geminos huic ubera circum | ludere pendentes pueros. 29. **solutum**: adjectival, as placatum, § 138, offensus, § 158.

156.—32. **silentio**, an abl. of manner *without* an epithet, or an abl. of attendant circumstances without *cum*. Instances of such ablatives are not altogether uncommon even in classical Lat.: gratiis, sortito, ordine, dolo, via ('methodically,' Cic., so via et ratione). *Silentio* is frequent in Caes. and Liv. So Sall. *Cat.* i., ne vitam silentio transeamus veluti pecora. But sometimes *cum silentio*, *magno silentio*. R. 1236, 1241, r. 503. 2. **Page 61,** l. 1. **ea lege, qua lege**: on the repetition of the antecedent v. § 49 n. **ei, qui magistratum habuerunt**, explained by the words of the law quoted in § 148, QUI TRIBUNUS . . . PLEBIS: deinceps omnes magistratus. Only those public officers who are elected by the people are *magistratus*: cp. n. on military tribunes, § 148. All officers are not magistrates; all magistrates are not senators. 2. 'I have not his permission to enter my protest, and plant my defensive works on the vantage-ground of the law.'

157.—10. **posita sit**, lit. 'is expended': v. Gloss. 11. 'In defending men who are in danger.' Cp. n. on § 17. **infinita**: cp. § 148, in quem quaerere? infinitum est. 'Unlimited in jurisdiction,' P. 15. **incertum**, 'vague': **obscurum et occultum** imply studied vagueness, 'mysterious and unintelligible.' Cp. § 1, obscurare dicendo. 19. **dicturum** is placed thus early in the sentence because it takes up *testimonium dixit* of the last sentence; **neminem** coming at the end, with **esse** marking its regimen, emphasises the negation.

158.—22. **si cui . . . facesseretur, . . . si is . . . voluerit, me . . . defensurum**: for this combination of a prior and wider with a later and narrower condition—the latter in the present case being expressed by *si* with the 2d Fut.—cp. § 6, l. 30, n. In § 140 we have a similar ex. with *cum*, the tenses being similarly related: cum . . . *defenderet* . . . cum . . . recitanda *curasset*, . . . esse commotus. The indicatives *facessetur*, *voluerit*, are somewhat irregular in *oratio obliqua*: but not uncommon where the governing verb is in the first person. The speaker, from *quoting* his own thoughts, slips into direct statement. Cp. *de fin.* i. § 55, concedo cadere causa, si qui . . . aliter *existimant*. Cp. § 6, l. 32, n. 25. **probaturum**: v. Gloss. 25. **omni**, 'to the full.'

LVIII.—29. **teneatur**, here, as above, subj. after consecutive *qui* (=talis qui). R. 1680, r. 704. 30. **offensus**: cp. Hor. *Epod.* xv. 15, nec semel offensae cedet constantia formae, 'nor will my resolution yield to beauty which has once become odious to it.' V. Gloss. *offendo*. 32. **religioni**, 'conscience,' 'reverence for the truth.' V. Glossary, and also crit. n. here.

159.—33. **tantum**, as often, '*only* so much.' 'That he has only been empowered . . . to the extent of his commission and trust.' *Permittitur* potestati, *committitur* fidei et religioni.—MAN. **Page 62**, l. 3. **posse**, τολμᾶν, the wise juror must '*have the strength of mind to*' neglect personal likes and dislikes. P. is wrong: 'he must bethink himself that it is open to him to . . .' Cp. Hor. *C.* iii. 11. 31, impiae sponsos potuere duro perdere ferro. 10. **habere in consilio**, cet. This metaphorical language is rather the terminology of the tribunal of the special *iudex* nominated by the praetor than that of the *quaest. perpetua*. Such a special *iudex* would have *assessors* to advise him on points of law, etc.: cp. Prop. v. 11. 19-21, aut si quis posita iudex sedet Aeacus urna . . . Adsideant fratres (as Mr. Postgate explains it). 11. **libidinem**, 'caprice.' 12. **conscientiam m. suae**, 'the approval of his own conscience': v. Glossary. 15. **sine ullo metu et summa cum honestate**: the effect of the order of the words is (as in *neque* . . . *et* . . ., and similar combinations) to throw an emphasis on to the latter member. 'Not only proof against all alarms, but in the perfect possession of virtue.' *Metus*, religious or moral apprehension (H. N. ap. P.). Verg. *G.* ii. 491, atque metus omnes et inexorabile fatum | subjicit pedibus.

160.—18. **egit**: of course not 'has done,' in the *representative* sense of *fecit*, but 'has urged': as in agere cum populo, actio, etc. 20. 'If I am to regard Cluentius's wishes, too much, if the importance of the subject, too little, but for men of your intelligence, sufficient.' For *dignitate* v. Gloss. 21. **videor**, 'I seem *to myself*,' *i.e.* 'I feel' or 'think.' So in Verg. frequently: *e.g.* possunt quia posse videntur.

III. Third Division of the Case.—Dealing with the 'Crimina' against Cluentius, or actual Charges of Poisoning.

(*a*) Attack on Decidius and others.

LIX.—161.—31. **familia**=familia servorum=servis (Ry.). V. Gloss. Hence *ab* is used. For **calamitate** v. Gloss. **dixistis** : on the plural v. crit. n. **Page 63,** l. 2. **vilicum** : v. crit. n. for the use of the sing. 3. **attulisse** depends on *dixistis*. **callibus** : v. crit. n. with ref. *Callis* (connected perhaps with √*kar* of κέλομαι, cel-er) is especially used of cattle-tracks on the upland pastures : nos hic pecorum modo per aestivos saltus deviasque callis exercitum ducimus, Liv. xxii. 14. 8. In the plural, the word is applied to the mountain pastures of Samnium (overlooking Campania, Liv. *l.c.*), Apulia, and Calabria, which in fact stretched along nearly the whole of the Adriatic coast. The 'silvae callesque,' or 'woods and forests,' formed the provincia of a quaestor, stationed apparently at Brundisium, in imperial times. Tac. *Ann.* iv. 27 (though some would read *Cales* there). 6. **illis**, 'the other party,' that of Decidius. **discessum est**, 'the disputants parted.' Cp. aequo Marte discedere.

(*b*) Cluentius got himself made heir to Aelius : other misdeeds.

162.—7. **P. Aeli . . . institutus est** : the words of the prosecution. 8. **alienior** : the comparative is absolutely used, as in *res maiores*, 'matters of great importance,' *senior*, 'an elderly man,' etc. It denotes the presence of the given quality in a *high* degree : 'more of a stranger than he might have been,' *i.e.* 'a perfect stranger.' Not as P., 'a distant connection,' *i.e.* 'more of a stranger than the *propinquus*.' 8. **Habiti merito** : an abl. of attendant circumstance with genitive as attribute. Cp. meritissimo eius quae volet faciemus. Plaut. *Asin.* iii. 3. 147 ; R. 1242, 1244 ; r. 504. So meo periculo, 'at my risk,' tuo commodo, 'if convenient to you.' 'Cluentius had a claim on P. Aelius for what he did.' 11. **infitiatum esse**, 'he refused to allow' the legacy due. It is a technical term : *infitiator* is 'one who denies his obligation to pay a certain sum,' e.g. *de Or.* i. § 168, si ille infitiator probasset iudici ante petitam esse pecuniam quam esset coepta deberi. Festus explains *infitiari*, 'creditum fraudari.' Iuv. *Sat.* xiii. 60, nunc si depositum non infitietur amicus. 12. **ei**, of course Florus : depending on *cautum*. 'The title of Florus was, in Cluentius's opinion, insufficient.' **cautum**, by the terms of the will, which contained a clerical error, 30,000 sestertii for 300,000 sestertii. The cumbrous Roman notation must have led to many such errors. Modern editors distinguish decem sestertii, decem sestertia, decies sestertium, thus, HS x, HS $\bar{x}$, $\overline{\text{HSX}}$: but the ancients allow the reader to

choose between them as best he can by the help of the context. 14. **debere** (se): v. crit. n. 15. **Cei . . . repetitam**: the offence would be one of 'plagium': cp. n. on § 21. 15. **bellum**: the Social War of B.C. 91-88, called also the Italian or Marsian war: cadum Marsi memorem duelli, Hor. *C.* iii. 14. 18. The Samnites in this war showed themselves the irreconcilable enemies of Rome, and after it joined in the revolution of Marius and Cinna; but were finally crushed by Sulla, B.C. 82, in the battle of the Colline Gate and subsequent massacre. 16. **sectoribus**, 'wholesale purchasers': a word of disputed origin. The property of one proscribed was sold by auction (sub hasta), as being that of a public enemy (hostis), and in the lump. Such a sale was called *sectio*, and the purchaser *sector*. Gaius says, '*sectores* vocantur qui publica bona mercantur.' Two derivations are suggested:—(i.) The grammarians explain it 'sectatores bonorum,' connecting it with *sequi* or *secare* = sequi. (Nonius, p. 404, secare sequi, unde et sectatores bonorum sectores dicti sunt: quoting Verg. *A.* x. 107, quam quisque secat spem.) The course of meaning would be *follow*, *petition*, *purchase*. Expressions for buying and selling are vague at first, then become definite: *emo* originally meant 'to take' (cp. adimo, etc.): to *purchase* meant 'to acquire': πρίασθαι, 'to have a thing brought across' (sea for sale). (ii.) From *seco*, 'to cut.' Explained in two ways: (*a*) because the purchaser *divided up* what he had bought, and sold it in lots. But this is by no means of the essence of the word. *R. Am.* § 103, declares the *sector* to be 'bonorum emptor *atque possessor*.' [Mr. Roby however thinks that the word *sector* from *secare* may well have denoted the position originally, although the purchaser did remain in *possession* for a time.] (*b*) according to Mommsen, one who 'cuts off' a percentage from the gross value on account of the encumbrances on the property, gives, *e.g.* 80 per cent. instead of cent. per cent. This is far-fetched. A full and satisfactory discussion of the words *sector* and *secare* (= sequi) may be found in Prof. Nettleship, *Essays*, p. 369 *sqq.* We may add that in Lucan, i. 178, *sectorque* favoris | ipse sui populus, the word means 'seller.' Terms of buying are sometimes confused with those of selling: compare Cheapside, chapman, Lat. **caupo** (§ 163), with Germ. *kaufen* (buy). In the days of barter there was little or no difference between buying and selling.

(*c*) Cluentius has taken the property of Ennius.

163.—19. **calumniator**: v. Gloss. 21. **cum servis furti egit**: 'brought an action against the slaves for theft.' The expression, as equivalent to *accuso*, is used with the gen. of the thing charged: cp. *Caec.* § 35, an ages iniuriarum? Cp. n. on § 97, maiestatis (condemnatus). An accus. of the *person* is also found: Liv. xxiv. 25, tanquam reos ageret; cp. iv. 42, si reum perago. 22. **illo privato iudicio**, viz., the trial for theft, which, strangely enough, was a *civil suit* at Rome: v. Ry. *R. Ant.*

p. 275, and § 120. **vobis**: Accius and the other accusers: v. crit. n. 23. **calumniam non effugiet** = calumniae iudicium non effugiet. (V. Gloss. on **calumnia.**) 'Believe me, the said civil action must involve him in the criminal penalties of calumny, even though he too will perhaps enjoy the advantage of your able advocacy.' It must be remembered that *calumnia* was a iudicium publicum: thus Cic. implies that Ennius, like Shylock in the Duke's Court, would find the tables turned upon him. From being claimant in a civil suit, he is to become defendant in a criminal trial. 24. **hominem multorum hospitum**: for the gen. v. crit. n. 'That man of hospitality, Ambivius, the innkeeper of the Latin Way.' The *Via Latina* ran through Latium as far as Beneventum in Samnium, where it joined the Via Appia. Cp. § 192. 27. 'It is still unnecessary,' *i.e.* 'at present it is unnecessary to speak.' 28. **Si invitaverit . . . decessisse**: it is not easy either to translate or to explain this play upon words. Ry. and P. both say that *travellers* were said *decedere de via* when they turned in to an inn by the roadside, upon what authority I do not know; *devertere* is 'to turn in' or 'put up at' a place, and also admits of being used metaphorically (v. L. and Sh.). Why then did not Cic. say *devertisse*? However, upon that view we should tr. 'If he gives us an invitation, *we* shall entertain *him* in such a way that he will regret ever having left the high-road.' But *de via decedere* has only one meaning, 'to go out of the way,' and with the dat. 'to make way for': cp. the famous 'salutari appeti decedi assurgi,' *de Senect.* § 63. And it is as *host* still that Ambivius *de via decedit*: this is far more probable than his sudden conversion into *guest* or *traveller*. So Sylvius rightly explains 'caupones ut hospites invitent, de via non numquam decedunt.' 'If he gives us his professional *invitation*, we shall give him such a warm reception that he will rue the day he *left his Road*' or '*went out of the Way* for us.' Of Ambivius as accuser, the expression means 'left the Latin Way for Rome': of Ambivius, as landlord, 'made way for us to enter his house,' or perhaps 'went out of his way to ask us in.' In fact there is a pun on *via*. Similar is the expression *de Fin.* v. § 5, paullum ad dexteram de via declinavi, ut ad Pericli sepulchrum accederem.

164.—31. **meditati**, 'after eight years' preparation.' Not a pass. part., 'schooled,' which, applied to a *person*, is found only in Plaut. *e.g.* adulescentem meditatum probe, *Trin.* iii. 3. 88. 32. 'Frivolous in actual character, unfounded in fact, briefly refuted.' A curious use of *brevia*: it is the answers to the charges, not the charges, that are *short*. The abl. (supine) is abl. of the 'thing in point of which,' as are *genere*, *re*: but those are necessary attributes, this is an accident. The expression will as little bear analysis as will that of the board-school essayist who said that 'pins have saved thousands of lives,' and explained, 'by not swallowing them.'

LX.—**Page 64**, l. 2. **oneris**, partitive gen., 'as a responsibility.' 4. **perorari**, lit. 'to be pleaded to the end': v. Gloss. 5. **quae ad**

huius . . . pertinerent, 'in which my client's wishes were deeply concerned, but your court had no concern whatever.'

THE REAL CHARGES AGAINST CLUENTIUS: (i.) POISONING OF VIBIUS CAPPADOX.

165.—7. **Vibium Cappadocem**: v. crit. n. on the name. 11. Many books insert after **mortuus**, 'At heres est Cluentius': v. crit. n. 13. **huic, illius sororis filio . . . Num. Cluentio**, 'Num. Cluentius, whom you see in court, son of my client's sister.' *Illius* can only refer to Cluentius, the defendant; the pronoun *hic* (which is more usual for him) being bespoken already. Ry. at the end of his note implies that *illius* = *Vibi*, as does P. in his translation (though not in his note). This is certainly wrong: we should have had *eius*, or no pron. at all, had Num. Cluentius been nephew of Vibius. It remains to inquire who this sister of Cluentius and her son were. (1) She is not the daughter of Sassia by A. Aurius Melinus, for that daughter married Oppianicus minor (§ 179), and therefore could not have had a son called Num. Cluentius. (2) Was she a daughter of Sassia by Oppianicus maior? No such daughter is mentioned: and the name again forbids it. (3) Probably this sister is Cluentius's own sister Cluentia, who was two years married to A. Aurius Melinus (§ 14), and may have borne him this son. Why then is the son not called Aurius, like L. Aurius (§ 25)? One reason may be suggested. His mother may have been divorced *before* his birth from A. Aurius Melinus. So he took his mother's *nomen*, and the *praenomen* of the sons of Dinaea, his father's kinswoman, an uncommon one, as we see from *Sest.* § 82, where one Numerius Quinctius Rufus escapes the hue and cry 'gemini nominis errore,' Numerius being known to some people only as a *praenomen*, to others only as a *nomen*. On his father's side he must have been connected with Vibius. It is noticeable that such a son ranks as an *eques*.

13. **ex edicto praetoris**: the succession to the property of an intestate was originally determined by the laws of the Twelve Tables; modifications, however, were introduced by various Praetorian Edicts. Ry. *R. Ant.* p. 264. [The *edictum perpetuum* of the praetor was a manifesto published upon his entry upon office, stating the legal principles upon which he proposed to base his official action. A new praetor naturally adopted in its main features the edict of the outgoing praetor, adding perhaps something of his own. Thus by this 'quasi-legislation' of successive praetors the *edictum perpetuum* ('standing edict') or *translaticium* ('transmitted') grew into a codified manual of civil law, the Edict of Julianus in Hadrian's reign forming its culmination. V. Momms. *R. St.* i. 197, ii. 212, 213. Also Maine's *Ancient Law*, p. 63.] V. n. on § 45.

(ii.) ATTEMPTED POISONING OF OPPIANICUS MINOR.

166.—17. 'At his marriage,' to the daughter of Sassia and A. Aurius Melinus'; v. previous note. 'Here we have at Larinum, nearly two thousand years ago, the fashionable wedding *déjeûner* of our own times,' Ry. 18. **id cum daretur in mulso**, 'when it was offered him in a cup of mead,' or wine mixed with honey. The imperf. of an *attempt* should be noticed. **mulsum**, best taken as a participial form of *mulcere*, 'softened,' viz., 'with honey': cp. *promulsis*, the antepast of a *cena*. 20. **que** introducing the last term of a series is not uncommon: *Mur.* § 1, mihi fidei magistratuique meo; *leg. agr.* ii. § 29, omne vestrum ius potestas libertasque. *Et* is so used in Cic. only if the appended member have special significance. Madv. *de Fin.* iv. 56 (aptae habiles et ad naturam accommodatae) brackets *habiles*, and gives many similar instances of erroneous readings. 22. **per quae**: the relative is adversative (cp. § 126), 'whereas I am now dismissing them with a passing notice.' For the construction *percurro per* v. crit. n.

167.—23. **Quid umquam . . . accederet**: v. crit. n. for the ingenious suggestion of Mr. Davies, that these words should be transposed to § 170, where they would refer to the elder Oppianicus. Taking them as they stand, the meaning of the clause **cum ille verbum . . . potuerit** is far from certain. (1) It should mean 'at a time when he could not have opened his mouth in this very case,' being a minor. But Cluent. might have wished to guard against future contingencies. (2) 'Since he could not (then or now) utter a sentence in his own cause': referring to the *infantia* (inability to speak) of Opp. minor, which Cic. derides in § 65, te appello, Oppianice, te, T. Acci; quorum alter eloquentia damnationem illam, alter tacita pietate deplorat: (so MAN.). (3) 'Because he could not have the shadow of a case against him,' P. suggests, but this is shirking the expression. The second rendering is quite the most satisfactory. It enables us to meet Mr. Davies's objection, that it could not be denied, even rhetorically, that Opp. minor was an object of fear to Cluent., and therefore, if possible, to be got rid of. Cic. can fairly say, 'Opp. minor is no speaker, and Cluent. could therefore always afford to despise him personally; again, if you say that at any rate he can afford an advocate like Accius, and is formidable in that way, I reply, There is always Sassia to provide accusers when he is gone.' 27. **An ut . . . accederet**: 'But perhaps the case against him was to retain undiminished its serious features, and withal to be reinforced by a new charge?' Here we have an adversative asyndeton: cp. § 138, populum Romanum sua sponte esse placatum, hominum seditiosorum vocibus . . . concitari. The whole depends upon the one *ut*: hence for the sake of concinnity we find *ut* . . . *nihil* instead of *ne quidquam* in the former of the two contrasted clauses. (We should have expected *sua* in place of *eius*; but the suppressed clause, hoc facinus in se admisit, is indistinct in the speaker's mind; and this is not

sufficient reason for taking *accederet* as an independent subj. in the dubitative use.) 29. **quod autem tempus**: 'but what sort of a time was that for administering poison? just consider the day, the numbers who were present, and again by whom it was administered, where it was procured, how came it to be intercepted, and then, why was it not administered again?' 30. **illa frequentia**: for the abl. v. crit. n. 31. **autem**: v. crit. n. for the meaning. 32. 'There is much that might be said, but I am not going to court the charge of having wished to say more while not saying it.' The abl. gerund here, as often in Livy, denotes 'the manner or circumstances': Liv. iii. 53, qui aequo iure in civitate vivit nec inferendo iniuriam nec patiendo; Verg. *A.* ii. 81, fando aliquod si forte tuas pervenit ad aures | Belidae nomen Palamedis, where *fando* = aliorum narratione.

168.—Page 65, l. 2. **dixistis**: for the plural v. crit. n. on § 161. 3. **magnum crimen**: n. on § 4, tantam opinionem. 4. **crudior**, 'somewhat dyspeptic.' *Crudus* (connected with *cruor*, κρέας) is properly *raw*, i.e. (*a*) 'not mellowed by the sun,' 'unripe,' 'green': cp. metaph. use, cruda deo viridisque senectus (Verg. *A.* vi. 304); (*b*) 'not softened by fire' ()(*coctus*), 'uncooked' (cp. Germ. *blutig*, of underdone meat); (*c*) hence of natural processes, (1) 'undigested,' of *food*, Iuv. i. 143 (quoted by Ry.), poena tamen praesens, cum tu deponis amictus | turgidus, et crudum pavonem in balnea portas; (2) of the person who has failed to digest, 'dyspeptic' (qui non concoxit), the adj. being used in an active sense. The comparative has an apologetic tone: cp. *de Orat.* i. § 124, 'noluit' inquiunt 'hodie agere Roscius,' aut 'crudior fuit.' Cp. n. on § 162, alienior. 4. **ut aetas illa fert**: cp. n. on § 46, ut mea fert opinio: and Gloss. *fero*. 'As young men like him will do' (P.). 7. For the use of *inquam* with a repeated word or phrase, cp. § 65, negate inquam meo loco (with crit. n. there). 8. **ex illo loco**, from the subsellia accusatorum; v. crit. n. on § 65, where the MSS. have *in eo loco*. 'He who would have been ready, had a shade of suspicion crossed his mind in his deep sorrow, to take his place on yonder benches, and give his evidence against Cluent., is here to exculpate him by his own deposition. Read it,'—the last words to the clerk of the court. 10. **Tu autem**, cet.: 'I suspect that the father of young Balbutius did not give evidence for nothing in favour of Cicero's client, who was accused of poisoning his son. The mock pathos of that passage is one of the most delicious things to be found anywhere.'—Davies in *Hermathena*, vol. ii. p. 396. [A perfectly gratuitous suspicion, which has the merit of blackening Balbutius's character as well as Cicero's. —H. J. R.] 'And you, sir, if I am not asking too much, rise for a few moments, and nerve yourself for the ordeal of this painful but indispensable recital. I shall not dwell upon it longer than I can help, because you have determined with true nobleness that no grief of yours shall entail false accusation and ruin upon the innocent,' viz., by his giving evidence on the other side, in a passionate wish to be avenged on somebody;

or, more simply, by refusing in his deep grief to appear on the side of Cluentius. 12. **fecisti ut ne**: cp. nihil gravius esse faciendum quam *ut . . . ne*, § 16 note. For the sequence *adferret* after perf., v. § 148 n. The witness stands while his deposition is being read. There seems to have been nothing like cross-examination by the counsel for the other side. Probably Cic. had obtained leave to have the elder Balbutius's evidence given in writing on the plea of his prostration by sorrow: his real reason may have been that the old man was less likely to contradict himself thus than if he spoke in open court. V. Ry. *R. Ant.* p. 298, on *tabulae* or written evidence, and cp. the reading of the *laudatio*, § 196 *ad fin.*

(iii.) Poisoning of Oppianicus the Elder.

LXI.—169.—19. **conflatum**: v. n. on § 9, quid invidia conflarit. Here the word is used in the first of the two metaphorical senses there mentioned—'to work up.' 'In it all the moving spirit has been his mother.' 25. **aut quod metuunt aut quod oderunt**: cp. the often quoted 'oderint dum metuant' (e.g. *Sest.* § 102), a favourite saying of the emperor Caligula.

170.—26. Cp. n. at beginning of § 167. There is a great similarity of argument. 30. **exsulis testimonio**: 'an exsul was *ipso facto* incapable of giving evidence—he was civilly dead,' Ry. The exile was capite deminutus. Cp. § 201 n. 33. **damnati**, cet.: the genitive depends on *illam*; the words are kept for the end of the sentence (instead of being connected with quam ille vivebat), because they thus convey the reason why the life of Opp. was not worth living. Page 66, l. 1. **animi importunitatem**, 'his misbegotten temper': *importunus* denoting something unnatural and portentous; here, the character of one who murdered wife and children. In *de Fin.* i. § 35 (nollem me ab eo ortum tam importuno tamque crudeli) it refers to Manlius, who executed his own son. V. Gloss. **recipere tecto**: simple local abl., the *place* being the *means*: Liv. xxvi. 25, ne quis urbe tecto mensa lare reciperet. We find also *domum*, *in civitatem*, *recipere*, R. 1174, 1177, r. 489. It is a mistake to say that *recipere* never means to *receive*. It frequently means 'receive' in the sense of *giving shelter to*: *Planc.* § 26, Minturnenses coloni . . . C. Marium . . . tecto receperunt. 2. On the climax in this sentence, and especially on the sense of *aspicere*, v. crit. n.

171.—5. **quod**: this attraction of the relative is very common. The attraction of the demonstrative is very similar: § 34, si haec solutio legatorum est, note. R. 1068, r. 451. 6. **perfugium calamitatis**, 'retreat from misfortune.' For the gen. cp. § 1, invidia iudicii, note. 6. **animi**, 'spirit.' The ancients did not hold that the suicide is necessarily a coward: witness their untiring praise of 'Cato's glorious death' (Hor. *C.* i. 12. 35). There was nothing in the ethics of the day answering to the Christian view of the sacredness of life. The Stoics allowed the wise man a εὔλογος ἐξαγωγή, or rational retirement from the

world, as soon as he found that with regard to the end of his being he lost rather than gained by living, and as patriotism decayed men ceased to feel that their lives belonged to their country as much as to themselves; the voluptuary committed suicide from sheer *ennui*. V. Merivale, *Rom. Hist.* ch. lxiv.; *de Fin.* iii. §§ 60, 61. 8. **vellet,** potential: 'what would have induced him to be willing, etc.?' (H. J. R.) 9. **nunc,** 'as it is,' though he did not die by his own hand: § 120 n. 10. **nisi forte . . . sensum doloris.** Doubtless Cic. is speaking here as the advocate, not as the philosopher or religious teacher. But, granting this, from a man of high character, such as he was, we expect consistency in essentials. The commentators here refer in his defence to the words of § 139, omnes illae orationes causarum ac temporum sunt, non hominum ipsorum aut patronorum, and imply that he here disowns convictions which he held *intima mente*, with regard to the immortality of the soul and the reality of a future state, and which he has enunciated in the *Tusculan Disputations* (Book i.), in the *Somnium Scipionis*, the *de Senectute*, and the *de Amicitia*. But it seems to us that this is not so. All that is alleged here as to a future state is, that the wicked are not haunted in another world by Furies and other creations of the popular imagination, but lose in death their consciousness. One other passage avers the contrary, it is true, but it is from a speech, not a philosophical treatise: *Philipp.* xiv. § 32, illi igitur impii, quos cecidistis, etiam ad inferos poenas parricidii luent; vos vero, qui extremum spiritum in victoria effudistis, piorum estis sedem et locum consecuti. Both passages are highly rhetorical. Now of the fate of the *wicked* in a future world, Cicero seems to say nothing positive in his philosophical writings. He speaks of the immortality of the soul in general, and his own intellectual position is best stated in the words of *Tusc.* i. § 25, mortem . . . quae aut beatos nos efficiet animis manentibus aut non miseros sensu carentes; *de Senect.* § 74, post mortem quidem sensus aut optandus aut nullus est: his faith or pious opinion in the words of *de Amic.* § 13, neque adsentior eis qui . . . disserere coeperunt, cum corporibus simul animos interire. He believes, moreover, that the good are rewarded in a future state. And to this faith, hesitating as it is, he adheres in his speeches: cp. the eulogy on Ser. Sulpicius in *Phil.* ix., especially § 13, gratior illi videtur, *si qui est sensus in morte*, aënea statua futura; *Sest.* § 131, si est aliqui sensus in morte praeclarorum virorum. In *Sest.* § 47 he states the alternatives just as in *Tusc.* i. § 25. Enough has been said to show that Cic. is consistent as far as he goes. There is no 'Ardiaeus the tyrant' suffering the pains of hell in the *Somn. Scipionis*. The closing words of that allegory, adapted from Plat. *Phaed.* 81 C, cannot be taken very literally: eorum animi, qui se corporis voluptatibus dediderunt earumque se quasi ministros praebuerunt impulsuque libidinum voluptatibus oboedientium deorum et hominum iura violaverunt, corporibus elapsi circum terram ipsam volutantur nec hunc in locum [scil. in caelum] nisi multis exagitati saeculis

revertuntur. At any rate there is nothing there about Furies and an Inferno. As the philosopher had not made up his mind, the orator might say what he liked. We may condemn him for having, in such a matter, spoken simply for effect, but the same thing is perhaps not unknown in modern times. In *Rosc. Am.* § 67, *Pis.* § 46, he treats the story of the Furies which haunted Orestes as a gross presentation of the terrors of conscience, which are the true punishment of sin. 12. **reliquisse**: cp. the attraction in § 138, ut mare . . . *agitari*, sic populum Romanum . . . concitari, note: infin. for subj. in both cases. Cp. also *Verr.* ii. 3. 216, noli igitur dicere istum idem fecisse quod *Sacerdotem*, sc. *fecisse* for sacerdos fecerit. R. 1784 b, r. 765 b. 13. **uxorum**: cp. § 125, qui uxores . . . interfecerit, crit. n. **liberum Poenis**: cp. Aesch. *Sept.* 70, 'Ἀρά τ', Ἐρινὺς πατρὸς ἡ μεγασθενής. The avenging fury is sometimes identified with the spirit of the murdered man or woman, as when Dido says to Aeneas, Omnibus umbra locis adero: dabis, improbe, poenas (*A.* iv. 386). So probably here. But more generally the Fury is a distinct being, the incarnation of the victim's prayers or vengeance. 15. **quid**=quid aliud: v. crit. n.

LXII. **172.**—18. **atque adeo** . . ., 'and in fact, as the intimate friend of Opp., he had, if anything, a quarrel with him.' *Adeo* is a very strong *etiam* here, 'and, what is more'; cp. *Rosc. Am.* § 113, is inter honestos homines atque adeo inter vivos numerabitur? 21. **potissimum** qualifies **ei**, 'to him of all men.' 'Was it likely (*imperf. tense*), that he would choose the man whom he knew to be more or less unfriendly to himself, and most intimate with Opp., as his confidential agent for his own guilty schemes, and the deadly peril of his foe?'—a common use of *potissimum* with pronouns: cp. *Phil.* ii. § 28, cur mihi potissimum [gratulatus est Brutus]? 24. **Habiti exemplo**: he refers to the trial of Scamander, and consequent *praeiudicium* against Opp.; cp. § 49.

173.—27. **Faciliusne . . . posset**? badly punctuated in many edd., because the purport of the sentence is missed. There are two questions, in truth, the first in three parts: 'Could the poison have worked so well if administered in a solid instead of a liquid? Could it have escaped detection *before* being administered and taken?' The former question is threefold in expression, and of anaphoric form: faciliusne potuit, latius potuit, celerius potuit . . . permanare? *Facilius*, poison in liquid is easier to take without feeling it; *latius*, it diffuses itself more widely through the veins of the victim (not as Ry., 'through the vehicle in which it was administered'); *celerius*, it operates more speedily. For *latius*, cp. crit. n. The same idea, that the poison fills the veins, appears in Hor. *C.* i. 37. 28, of Cleopatra—

fortis et asperas
tractare serpentes ut atro
corpore *combiberet* venenum.

In the other case the poison might long remain 'abditum aliqua in parte panis' before permeating the body of the victim. 31. **si esset animadversum**, sc. venenum, 'if attention were called to it.' Not strictly logical: in that case the question would cease to be one of degree; the answer is *non* falleret, not *non tam facile* falleret. Precision is sacrificed to terseness: the attempt to poison is confused with the poison itself.

174.—Page 67, l. 3. **in eo ipso**, repentina morte Oppianici.

175.—7. **undique exclusus**, 'universally tabooed': no one would open the door to him. Cp. Ov. *A. Am.* iii. 69, quae nunc excludis amantem: frequent in the Com. poets. 8. **L. Quinctius**, in all probability the tribune, his late advocate: the only man likely to receive him under the circumstances, and so Cic. does not qualify the simple name by any addition. **in Falernum**, *agrum*, not *praedium* (as L. and Sh.), though the latter is the common ellipse: the preposition (*in* not *ad*) is in favour of the former. [Perhaps sub. *fundum*, cp. § 141.—H. J. R.] The ager Falernus, famous for its wine, lay in the north of Campania, between the Massic Hills and the river Volturnus. 9. **ac satis vehementer diuque aegrotavit**: not an example of the change of connecting particle (*ac . . . que*): *ac* connects the verbs, and *que* the adverbs, which taken together are qualified by *satis*.[1] 11. **colono, homine valenti**, 'a lusty yeoman' (P.). His rude health is contrasted with the illness of Opp. For the abl. in *i* v. crit. n. 12. **vir dissolutissimus**, 'Opp. in spite of his looseness': καιπὲρ ὢν ἀσελγέστατος (√σFελ- in σαλεύω: a 'shaky,' loose character). Bradl. *Arn.* § 224, obs. 1. For **homine . . . vir**, cp. n. on § 77. **incolumi fortuna pati posset**, 'could have tolerated had his fortunes been what they once were': not as P., 'could have endured in the days of his prosperity': *posset* is contemporaneous with *uteretur*, and the protasis is contained in the abl. abs. For *incolumis* cp. § 10 n. 15. **servulus**, 'a favourite slave': for the force of the diminutive (here laudatory), cp. § 37, n. on *muliercula*. 18. **ad urbem**, 'to the neighbourhood of Rome': 'aquae et ignis interdictio,' excluded him only from the city itself. 19. **cecidisse de equo dicitur**: not a very confident assertion. Cp. Introd. p. xxxiii. 20. **latus offendisse vehem.**, 'sustained a severe contusion of the side': v. Gloss. 22. **Mortis ratio**, 'the circumstances of his death': v. Gloss.

LXIII. 176.—28. **quasi ut idem faceret**, 'ostensibly with the same design as that of Habitus in the purchase of Diogenes': quo facilius comprehenderetur res eius indicio, § 47. 30. **quaesituram esse dixit**: for omission of pronominal subject to infin. cp. posse arbitrati sunt, § 36. Here, in the case of a composite infin. form. the presence of *esse* is exceptional: contrast *de Fin.* v. § 31, si quando eis minamur praecipitaturos alicunde, for *nos p. esse*: and cp. Liv. xxviii. 23. 6, perfugae pollicentes urbem prodituros esse. V. crit. n. here. 31. 'Whom she

[1] Not so Dräg. *Synt.* ii. § 316.

suspected of having been too free with his tongue, and too loyal to his master.' **Page 68,** l. 1. **puer**: for the age of Opp. the younger, cp. Introd. The word cannot be pressed: cp. L. and Sh. sub voc. *puer*, and n. on puero non grandi, § 179; it is used of Octavius at the age of nineteen, *ad Fam.* ii. 1. 2. 3. **Advocantur amici**: cp. the case of Sex. Roscius (*R. Am.* § 77), who similarly called in his friends and demanded his dead father's slaves, for examination touching his death, of T. Roscius, who then held his property: vobis advocatis, vobis agentibus, duos servos paternos in quaestionem ab adversariis Sex. Roscius postulabat. 5. **homines . . . ornati**: an admission on the advocate's part, if the principle of 'noscitur a sociis' holds. Contrast the closing words of § 170, quem nemo recipere tecto, nemo adire, nemo adloqui, nemo aspicere vellet. For **ornati** v. Gloss. 6. **cum essent animi servorum et spe et metu temptati**, 'when alike promises and threats had been tried upon the slaves.' Cp. § 47, spe et pretio sollicitare; *Sest.* § 34, et spe et promissis tenebat. 8. **auctoritate advocatorum atque vi tormentorum adducti**: very difficult words. (1) Class. takes them as ironical: 'Si quid miseros illos ad confitenda etiam quae non commisissent permovere potuisset, adduxisset certe *auctoritas advocatorum et vis tormentorum:* quum tamen nihil fassi sint, cum acerbo risu illud constantiae causam fuisse dicit orator, quod minime esse potuit, et veram causam, quam sponte quisque intellecturus erat, reticet *innocentiae conscientiam.*' (So in effect P.) That is, Cic. gives as reasons for their adhering to the truth what were really incentives to falsehood. Now no doubt Class. does not understand *auct. advocatorum*, or the words *homines honesti*, cet., as simple sarcasm. Nevertheless, unless we are to take *atque vi torm.* as a παρὰ προσδοκίαν (which would be quite out of place in an almost pathetic narrative), the two ablatives are on exactly the same footing. That is, Cic. is made to imply that the '*auctoritas*' of these men was *not* an inducement to veracity. The whole tone of the chapter forbids that. (2) The words, if they are to stand at all (about which v. crit. n.), must be taken as serious. 'Influenced by the moral support of the witnesses, and the very violence of the torture,' which produced the opposite effect to that intended by Sassia, and, instead of wringing the falsehood from them that she wished, made them in dogged spite adhere to the truth.

177.—12. **nulla vis . . . praetermittitur**, 'the most exquisite tortures are brought into requisition.' 13. **adversari . . . furere**: for the historic infin. cp. § 59 note. 15. **ea . . . procedere**: the acc. and infin. depend on *furere*, or rather on the idea of *irasci* contained in it. So the emotion felt and its symptoms are identified in the use of *tremisco*, with an object clause, Verg. *A.* xii. 916, telum instare tremiscit, and of *tremisco tremo trepido* with acc. of object. Such sense-constructions are commoner in Greek: *e.g.* ἐκπλαγῆναι with acc. **Cum iam tortor atque essent tormenta ipsa defessa**: the order of the words is such as

to emphasise *tormenta*. The more usual form of *coniunctio* is *cum tortor esset atque t. i. d.* Cp. n. on § 2. 19. **id agi ut . . .**, 'the object was to . . .' So § 145, si nihil aliud esset actum nisi ut hanc causam obtineremus. 21. **ex omnium . . . quaesitum**, 'it was unanimously agreed that this examination shall be held to have ended.' Not a pleonasm of the ordinary sort, such as *opinionem* quod *existimaris*, § 143 n. The actual words of the resolution are given: **videri** is generally used of the formal recording of any such opinion: *e.g. fecisse videri* is the verdict Guilty.

178.—22. **Larinum**: the examination of the slaves must have taken place at Rome. 24. **non modo** (non) **sed ne . . . quidem**: § 9, ut non modo ab eisdem sed ne ab aliis quidem ullis absolvi posset, with n. So below. **ad quem . . . perveniret**: **cui . . . potuissent**, subjunctives of attendant circumstances (*qui=cum is*), R. 1714, r. 718. 27. **quae . . . simulasset**, concessive use of the relative; cp. § 126, quae summa est (antithetical relative), with n. 29. **instructam**, 'equipped' or 'furnished'; cp. n. on § 18. **ornatam**, 'fitted up' or 'stocked'; v. Gloss.

LXIV. 31. **Unum alterum, tertium**: cp. *Verr.* ii. 4. 66, rex primo nihil metuere, nihil suspicari: dies unus, alter, plures: non referri. Cp. Mr. Gladstone's words: 'he would think once, he would think twice, he would think thrice, before proposing to abolish the House of Lords.' 32. **optare**, 'the active formation of a wish' (Ry.) is not a mere synonym of *velle*. It is 'to set one's heart on something' which one has chosen: cp. Hor., optat ephippia bos, piger optat arare caballus (*Ep.* i. 14. 43): also the climax in § 188, voluerit optaverit cogitaverit effecerit. Hence we have velle *atque* optare, but struere *et* moliri: the latter being two forms of the same activity—'to go about a thing,' 'to exert oneself upon a thing.'

179.—33. Q. Hortensius, Q. Caecilius Metellus Creticus, coss. in B.C. 69. **Page 69**, l. 1. **aliud agentem**)(hoc agentem: note on § 155. 'Though his interests were elsewhere.' 3. **ex genero**, A. Aurio Melino. 4. **nuptiis adligatum**, 'tied, fettered by his marriage.' V. Gloss. 'In the hope that these matrimonial bonds, as well as the fetters of an expectant heir, would put him in her power' (P.). 5. **possit**: the vivid construction, giving the thoughts of Sassia in the tense which she would use. V. crit. n. 7. **sciret** may be explained as suboblique, or as attracted into the mood of its principal verb *esset*: but more probably it is a confusion between the fact (in quo esset) and the thinking or knowing of the fact (in quo esse sciebat). Cp. litteras, quas me sibi misisse diceret recitavit. R. 1742, 1746, r. 742. **nummorum**, coined money, cash: **auri**, bullion: v. next sentence. 8. **conservos**: condiscipulus, commilito, contribulis, coheres, are good Latin: but not concivis, coaequalis. 10. **auri quinque pondo**, 'five pounds of gold,' the original expression being auri quinque *libras pondo* (abl. of respect,

'in weight'). When *libras* was omitted, *pondo* came to be treated as an indeclinable subst. meaning 'pounds': *e.g.* in Pl. *Asin.* 279, quot pondo ted esse censes nudum, it is gen. R. 1209 n. 4 (r. 497). **puero non grandi**: cp. n. on § 176 as to the vagueness of *puer*, whence the need for an epithet. *Grandis*, 'grown up': § 11, grandem et nubilem filiam.

180.—12. **non comparebant**, 'were not forthcoming': cp. n. on *apparere*, § 147. 13. For the asyndetic style of this narrative cp. n. on § 58. 16. 'That he had lately seen among the sundries for sale at an auction, a fine saw, curved in shape, crooked, and with teeth on every edge.' A singular tool: but for that very reason, valuable in supplying circumstantial evidence: it had left its own mark in the bottom of the chest. However, Mr. Davies reads 'aduncam ex omni parte serrulam': and supposes Cic. to have mixed up in his description the action of two tools, both indispensable: the brace-and-bit and the saw. The former bores the hole to start from; it consists of a bow-shaped frame, on the top of which one hand is placed, while the other hand, holding it in the middle, revolves it round the bit (as axis), which fits into the lower end of it. The bit has two teeth curving outwards on either side of the diameter; and this, according to Mr. Davies, is the reference of *aduncam*, while *ex omni parte* is 'sheer ignorance' on Cic.'s part. [The brace-and-bit is not mentioned in Blümner's *Technologie.*—H. J. R.]



AB, brace. *BC*, bit.

18. **coactores**, 'collectors' of revenue or money due after an auction: here the latter. Ry. reminds us that this occupation was that of the father of Horace:

> nec timuit, sibi ne vitio quis verteret, olim
> si praeco parvas aut, ut fuit ipse, coactor
> mercedes sequerer. (*S.* i. 6. 86.)

21. According to Donatus, *indicat* is qui de se volens aliquid et de aliis etiam prodit: sed *confitetur* qui de se tantum, et qui invitus (ad Ter. *Adelph.* prol. 5). For a spontaneous confession as to oneself the strongest word is *profiteor*: *Caec.* § 24, confitetur, atque ita libenter confitetur, ut non solum fateri, sed etiam profiteri videatur.

181.—25. **An** here is almost = *num*: it introduces the second of two alternatives, the first of which is implied in *quid quisquam . . . potest?* 'Am I right in saying that no one could suspect anything else? or will you say . . . ?' Cp. § 65, quid reticetis? an negare non potestis quod repetistis? where, however, *an* almost = *nonne*: cp. § 99, note on *nescio*

an. 27. **cui probatis**? 'to whom will your story commend itself?' V. Gloss. 28. 'Is there anything that you could bring forward more improbable?' V. crit. n. 30. **atque etiam incensa**, cet. A summary of the preceding part of the section will explain the sequence here. 'An inquiry was set on foot with regard to the theft. So at least every one must suppose, considering what were the circumstances immediately preceding, the ransacking of the chest, the murder of the slaves, etc. Most improbable that it should have been about anything else. There is another circumstance (*deinde*): was it likely that an inquest would be held on Opp. three years after his death? Well, not only was such an inquest held, but (*atque etiam*) once more she demanded Nicostratus for examination.' Thus *atque etiam . . . postulavit* is the answer to *quaerebatur?* 32. **Postea, cum**, a necessary correction for *postea quam* of the MSS., which cannot be proved ever to take the subj. construction in Cicero. V. crit. n.

LXV. 182.—**Page 70**, l. 4. **de quibus servis** *quaestio* habebatur: the verbal subst. has the same construction as the verb; cp. § 176, de hoc Stratone . . . quaesituram esse dixit. *Quaero de* or *ex aliquo* is used of examination by torture (though by no means exclusively): *quaero ab aliquo* is the more ordinary construction. Cp. *Rosc. Am.* § 120, si quaeritur de Sex Roscii servis, non in dominum quaeritur: contrast *ib.* § 73, quaero abs te, C. Eruci, quo modo. 5. **credo** parenthetical is almost always ironical: 'I dare say,' 'very likely.' 7. **Itane tandem**? derisive, 'is it really so?' ἄληθες; 8. **morbo**, animi: so *νόσος*=*madness*. Compare Hor. *Serm.* ii. 3. 79, quisquis luxuria tristive superstitione | aut alio mentis morbo calet; *Tusc.* iii. § 7, misereri invidere gestire laetari, haec omnia morbos Graeci appellant, motus animi rationi non obtemperantis, where he proceeds to say that the more usual term in Latin is *perturbatio*. V. crit. n. on this sentence. 12. **non dicam** nullo **viro . . . sed** nullo **bono viro**: 'I will not say no man whatever, but no respectable man.' *Non dicam* (or *non modo*) . . . *sed* is often thus used where the speaker expressly rejects a stronger and wider in favour of a more limited and cautious assertion. *Sest.* § 108, quis *non modo* ad probavit *sed* non indignissimum facinus putavit illum *non dicam* loqui *sed* vivere ac spirare? *Planc.* § 78 (Holden). **ne colonum . . . dicatis**, referring to the paramour of Sassia, Sex. Albius (§ 175), who, it is distinctly implied, was present at this examination. He is again referred to in § 185, neminem [qui obsignarit] reperietis, nisi forte eiusmodi hominem, quem ego proferri malim quam neminem nominari. We must take Cicero's word for the worthlessness of this man's testimony.

183.—15. **tametsi ab hoc non esse hoc dictum mementote**: v. crit. n. for variants and explanation of this clause: *ab hoc*=*ab Accio*. 17. **Hoc uno modo**, cet., 'gentlemen, thus and thus only many a time does truth lift up her head, which the villainy of numbers has long held down, thus does the defence of the innocent, long stifled thereby, draw breath again.'

Multorum improbitate belongs to *interclusa* as well as to *depressa*. The chiasmus should be observed (depressa *veritas*, *defensio* interclusa) combined with the normal arrangement of the parts, mult. improbitate being placed first as common to both clauses, and the verbs being placed last in their respective clauses. Cp. § 83 n. 19. **ad fraudem**, 'in respect of cunning,' lit.; cp. § 199, nihil ad similitudinem hominis reservarit; *Mur.* § 38, hoc quanti putas esse ad famam hominum; Liv. ix. 16, invicti ad laborem corporis. 'Those who are rascality itself allow their courage in action to fall short of their subtlety in conception.' 21. **proiecta**, 'prominent' (standing out in relief): cp. *de Rep.* iii. § 11, iustitia foras spectat et proiecta tota est atque eminet. Another meaning is 'tending strongly towards,' or 'headstrong': *Verr.* ii. 1. 2, Verres . . . ut ad audendum proiectus sic paratus ad audiendum; of a thing, *Dom.* § 115, cum proiecta quadam et effrenata cupiditate. Thirdly, it means 'thrown away,' 'worthless': proiecta vilior alga, Verg. **a consiliis malitiae deseruntur**: the prep. *ab* is sometimes used instead of the instrumental abl. after the verbs of *deserting* in the pass. voice: a sort of personification of the thing takes place: cp. § 110, a tribunicia voce desertum locum, with crit. n.; *ad Fam.* v. 2. 10, desertus ab officiis tuis. For *malitia* in the specific sense of 'roguery,' cp. § 70, ad omnem malitiam et fraudem versare suam mentem coepit. 22. **confidens**, *confidenter* and *confidentia* used invariably in a bad sense, 'self-confident,' 'audacious': *Tusc.* iii. § 14, qui *fortis* est, idem est fidens, quoniam *confidens* mala consuetudine loquendi in vitio ponitur, ductum verbum a confidendo quod laudis est. 26. **An id actum non est in quaerendo**? 'Was not this the object of the inquiry?' Cp. § 177, non id agi ut verum inveniretur. 27. **an, id . . . dixisse de veneno**? For the attraction in this sentence v. crit. n. Similarly *de Rep.* i. § 58, si, ut Graeci dicunt, omnes aut Graios *esse* aut barbaros, vereor, cet., and Dr. Holden on *de Off.* i. § 22.

184.—'The woman has audacity enough and to spare, but is wanting in prudence and tact' (P.), or rather, 'but her judgment and common-sense are running short': *deficitur*, lit. 'is being deserted,' not a common pass. Cp. the use of the act. in *Catil.* iii. § 11, eum non modo illud et dicendi exercitatio . . . sed etiam sceleris impudentia improbitasque defecit. 31. **tabellae quaestionis**, 'minutes of the depositions extorted: **plures**, 'several'=*complures*, as in § 115, pluribus verbis docere: **tum obsignatas**, sealed up by *advocati* at the time that they were given. Cp. § 37 n. 33. **in quibus tabellis**: for the repetition of the antecedent cp. n. on § 49, causam in qua causa. **Page 71**, l. 2. **aliquod dictum**: v. crit. n. 6. **quod ipsum eadem haec mulier iudicarat**: 'and this verdict the woman herself had pronounced.' There was a virtual *iudicium* in the favours which Sassia had bestowed upon Strato.

185.—10. **et eo furto**, 'and that a theft which he had beyond dispute committed.' For this use of *et is* or *isque*, 'added with some detail to which attention is drawn,' v. Bradl. *Arn.* § 344. Sometimes *idque* is used

adverbially, *e.g.* hominem studiis optimis deditum *idque* a puero, *καὶ ταῦτα ἐκ παιδός.*

LXVI.—15. **illam nefariam mulierem** : for the omission of *tam* after the pronoun, cp. n. on ista multa iudicia, § 88. 17. **Atque . . . nominatim** : v. crit. n. 19. **quem ego proferri malim** : ut ei credendum non esse multis argumentis ostendam.—MAN. Cp. n. on § 182, ne colonum dicatis.

186.—22. **adferas** : 'inest admiratio quaedam in coniunctivo,' Class. 'Are you to come before this court with a capital charge, with a criminal information, with the fortunes of another man indited in a document, without your naming any one responsible for this document, any one who sealed it up or witnessed it?' *Adferas nec . . . nominabis*, paratactic for the hypotactic *ita adferas ut neminem nomines.* 23. 'And do you expect this honourable court to sanction the instrument, which you have produced from a mother's bosom, to deal a most guiltless son his death-blow? Enough, the depositions have no weight.' *Esto* is not concessive here, as usual : it dismisses the subject. 29. **hominibus** : the abl. with *facere*, 'to do something *with* a person,' is instrumental : cp. *Sest.* § 29, quid hoc homine facias : and for a similar abl. the Plautine si quid *me* fuat (*Poen.* 1082), 'if anything befalls me.' But the dat. (commodi) is also used with *facere* : Hor. *Serm.* i. 1. 63, quid facias illi? lit. 'what can you do for him?' *i.e.* how meet his case? (So § 53, insidias quae fierent Habito.) This would be the normal construction : the former is the more forcible, which by a figure the opposite of personification ('impersonification,' to coin a word) treats a person as a thing. R. 1224, r. 499.

187.—**Page 72**, l. 1. **Nam** gives the reason, not for the previous question, but for the fact of his putting the previous question. 'I ask about Nicostratus: *for* you know what has happened to Strato.' Cp. § 85 n., and § 70, quid tandem . . . nihil enim est quod non fieri possit . . . si quis eum forte casus ex periculo eripuerit, nonne reddundum est? In such cases, while it may be convenient to insert words in translating, there is no real ellipse. **in crucem actum**, 'crucified' : *in crucem tollere* is the commoner phrase. 5. **sic** takes up *quasi* : 'just as if.' 6. **servuli** : the diminutive is here depreciatory, 'a miserable slave.'

188.—7. Cp. *Rosc. Am.* § 63, *portentum* atque *monstrum* certissimum est, esse aliquem humana specie et figura, qui tantum immanitate bestias vicerit. Here, however, *portentum* and *monstrum* are personal : 'Great heavens! what a monster have we here! In all the world is there anywhere the like of this unnatural phenomenon, of this hateful and portentous abomination to be found? And, if so, whence has it sprung into being?' For *scelus=sceleratus*, cp. in *Pis.* § 56, o scelus, o pestis, o labes! cum exstinguebas senatum, cet. In § 15 it has its ordinary sense : o mulieris scelus incredibile. For **immane** cp. § 41, ut aliquam immanem ac perniciosam bestiam : 'monstrous' and even 'bestial.' It is derived from an

old adj. manus meaning 'good' (according to Varro), and connected with √ma, to measure, thus signifying 'unmeasured,' 'unwieldy,' 'savage.' Manes ('the good people,' *i.e.* spirits), mane ('in good time'), Manius ('the early-born') are cognate words. 12. **voluerit, optaverit, cogitaverit, effecerit**: a good climax. For the first two words cp. § 178 n. *Cogito* (co-agito) is properly 'to work a thing up in one's mind,' so here 'to work up details into a coherent plan,' 'to design.' 16. **commune familiae dedecus**: cp. the words of § 16, tulit hoc commune dedecus familiae, cognationis, nominis graviter filius. 17. 'I do not complain of her second marriage with Opp.': it was her *third* in fact: but in the present context he only takes count of two marriages, that with A. Aurius Melinus and that with Opp. **quarum illa**, cet., 'by contracting which—but not until she had taken securities of him in his sons' lives—she made her new home a house of mourning, and signed the death-warrant of her stepsons'—*in* expresses the result, not a common use before Livy: cp. in rem esse, 'to be useful.' 20. **A. Aurium . . . cum . . . esse proscriptum cognosset**: the tendency of Latin writers is to place the temporal conjunctions *cum* and *ubi* in the second place, or even later, in the clause which they govern, except in the case of the shortest clauses.

189.—24. **quod nunc denique patefactum est**: her complicity in the plot against the life of Cluentius is sufficiently clear from her present animosity against him. 25. **veneni**, gen. of definition: lit. 'the crime, viz. the attempt to poison': cp. virtus iustitiae. R. 1302, r. 523 a. **iam tum recens**)(*nunc vero*, 'in those early days'; *recens* is an adj.; not an adverb, a use not found in Cic. 27. **non est . . . celata mater**; 'certainly his mother was not kept in the dark as to that attempt to poison.' Here Cic. takes up his words, 'illud primum queror de illo scelere,' after the parenthetic quod . . . videtur. When he says in that parenthesis that the attempt was, when first discovered, 'matter of mere suspicion to people in general, and to my client inconceivable,' he is not admitting that there was any doubt as to the existence of the plot, but only as to its having existed *matre conscia*. Graevius indeed supposes an anacoluthon: de illo scelere (which should have been continued non est celata mater) being repeated non est profecto de i. v. c. m. after the interruption of the relative sentence: comparing § 12, nam Sassia . . . ea igitur mater Habiti, cet. But this is forced. **celata**: observe that the personally used pass. verb *celor* does not take an acc. of the thing (unless it be a neut. pron., such as *hoc*), but prefers the prepositional government, which indeed is often similarly preferred in the act.: *Sull.* § 39, credo celatum esse Cassium de Sulla uno. Cp. Bradl. *Arn.* § 231. 29. **quod si esset** = quod si quicquam ita cogitatum esset; v. crit. n. 31. **scelerum adfluentem**: there is no other ex. of this construction with *adfluens*: but it is by no means alien to the genius of the language. If Cic. can write refertam Graeciam sceleratissimorum (*Planc.* § 98), surely he may also write *scelerum adfluens*. V. R. 1336, r. 530; and also crit.

n. : and for the description of the house, § 27, domum viri sui sanguine redundantem.

190.—Page 73, l. 3. **donis muneribus** : cp. crit. n. on § 66, tantum donis datis muneribusque perfecerat, for this legal phrase, 'gifts and donations,' the latter of the two being the more specific term.

LXVII. 5. For this use of **quod** to point a contrast, cp. § 28, ita quod ceteri propter liberos pecuniae cupidiores solent esse, ille propter pecuniam liberos amittere iucundum esse duxit, with note. 7. **discidia**, never to be spelt *dissidia* (as often in the older edd., even in such a passage as *Balb.* § 30, dissidentem a populo Romano odio quodam atque discidio). It is properly the *snapping* (discindo) of a tie. **vidimus** : for the tense v. crit. n. 11. **adfinitatis coniunctionem** answers to the cognate construction which appears in, *e.g.*, nuptiae sceleris societate coniunctae, § 35 : 'Believed that the bonds of a marriage tie would be a guarantee for the perpetuation of ill-will.'

191.—13. **compararet**, 'procure': **armaret**, 'equip.' 14. **minis et promissis**, cp. § 176, et spe et metu : 'Overtures to slaves alike by threat and promise.' 16. **aliquando**, 'at length': cp. § 25, and the opening words of *Catil.* ii., tandem aliquando, Quirites, L. Catilinam . . . eiecimus. **modus**, here almost subjective (=*modestia*). 'No scruple on her part.' The phrase *sine modo modestiaque* (Sall. and Liv.) may be compared, 'without limit or restraint.' Cp. also § 96 (in illo iudicio) non modus ullus est adhibitus. For **auctoritas** v. Gloss. 18. **falsae conscriptiones quaestionum**, 'spurious depositions at the examinations,' viz. those of Strato and Nicostratus, § 182. 20. **totius denique**, cet., 'this whole accusation, as it has been got up, is hers both in its conception and in its presentation.' This section should be compared with § 18.

192.—22. **his rebus instructum**, 'thus armed.' 23. **conquirendorum . . . causa**, 'in order to get together and engage witnesses.' Cp. *ad. Fam.* iii. 11. 3, mercennarii testes. 26. **diligentia**, 'vigilance,' § 3, diligentia vestra nobis adiungenda est, with note. 27. **aut ne forte**, cet., 'or, it may be, lest her maternal eyes should miss the sight on which they longed to feast, her son's woeful aspect and garb of mourning.' Cp. § 18, squalore huius et sordibus laetatur : Becker's *Gallus*, sc. viii. (Chresimus to Gallus), 'hear the counsel of a faithful servant. Divest yourself of all the insignia of the distinction befitting your rank. Throw carelessly round you the worst and oldest toga you can find, and publicly display the sorrow with which the interdict has filled you.' 'How,' retorted Gallus, 'humble myself and go about in dirty garments like a criminal, and beg for mercy!' Such was the mourning adopted at Rome, whether in times of bereavement or of peril from a heavy accusation : the sufferer assumed the *sordida vestis* (*vestem mutavit*), let his hair grow, and discarded all decorations.

LXVIII. 30. 'But imagine, if you can, that journey of hers to Rome.'

The route may be traced on any map; she would pass through Bovianum and Aesernia, join the via Latina at Venafrum, and so travel to Rome: v. Ramsay's note. 31. **Aquinum** and **Fabraterna**, on the via Latina, are respectively only eleven and seven miles from Arpinum, Cicero's birth-place. 31. **quod . . . audivi**, 'about which I heard': *audio* with acc. here = 'hear the story of,' *audio de*. So not unfrequently: Hor. *C.* i. 2. 23, audiet pugnas vitio parentum | rara iuventus: *Marcell.* § 28, pugnas innumerabiles, incredibiles victorias, monumenta, munera, triumphos audientes et legentes tuos. By a kind of abbreviation in thought, the thing itself is substituted for the account of it.

193.—**Page 74**, l. 4. **dicam**, future: cp. § 51, quod timide dicam, note. 8. **consistendi potestas**, 'in no town was she allowed to make a halt.' *Sest.* § 113, quibus illo in genere conductarum contionum *consistendi potestas* non fuit, with a slightly different sense, 'who could not hold their own in packed meetings like those,' cp. § 108, consistere indicendo. 9. **contagionem aspectus**, 'her baleful glance.'

194.—12. **nostrorum**, gen. pl. of *nos*, v. crit. n. 13. **fidem**, 'integrity.' For other meanings v. § 3 n. 15. **occultiora**: for the comparative cp. § 162, alienior, 'a perfect stranger.' So here, 'which she imagines to be a great secret.' 17. **neque intellegit**, cet. 'not perceiving that the favour of Heaven may be gained by devotion to duty towards man and towards God, and by righteous prayers, not by polluted superstition and sacrifices offered that crime may prosper.'

Peroration of the Speech.

LXIX. 195.—22. **quasi aliquos deos**, 'whom fortune has appointed to play the part of another Providence to Cluentius' (P). V. crit. n. (Why '*fortune*'? An allusion to the *sortitio*.) 24. **importunitatem**, 'accursed rage': cp. § 170, animi importunitatem, and Gloss. 'Many have ere now deferred to their pity for the fathers in judging the sins of the children: we ask you not to surrender to the heartlessness of his mother in dealing with my client's most honourable past.' The antithesis is verbal rather than real, *peccata misericordiae concesserunt*, *honestissime actam vitam crudelitati condonetis*: so far well, but *parentum* is not related to *mis.* as *matris* to *crud.*; the genitives are differently used. Cp. a similar antithesis, § 5 *ad fin.* 25. **concesserunt**: cp. *Prov. Cons.* § 44, me dolorem et inimicitias meas rei publicae concessisse, 'have waived in consideration of the public interest.' For **condonetis** cp. § 109, non sibi ac defensioni suae condonatum esse Opp., 'had been pardoned in compliment to.' Here 'sacrifice to.' 27. **praesertim cum**: cp. n. on § 103. 30. **studio frequentiaque**, 'by their partisanship and presence in force': answering to § 197, huc frequentes adesse et hunc frequentes laudare. **Page 75**, l. 1. **non domesticis . . . tutum**: v. crit. n.

2. **aeque et**: cp. n. on § 1 for the origin of the use of *et* in comparisons. **huius exspectatio**, cet., 'the suspense entailed by this trial keeps night and day on the rack.'

196.—5. **Statu, dignitate commodisque**: for *que* with the third of a series, which is not uncommon, cp. *Mur.* § 1, fauste feliciter prospereque. So § 166 *supra*. Contrast what is said of *et* in crit. n. § 182. **statu**, not mere 'state' or 'condition': in the best classical prose the word always implies more 'settled or fixed position,' 'standing.' So *supra*, § 106, quin de statu suo declinarint: *Catil.* i. § 3, Ti. Gracchum mediocriter labefactantem statum rei p. interfecit. 7. **diligentia**, as in § 192. 'Gentlemen, nothing can exceed my client's vigilance for the public interests of his town.' 9. **nobilitatem**, v. Gloss. 11. **adsequatur**, prop. 'comes up to,' 'overtakes,' *i.e.* 'does not come short of.' **gratiam**, 'popularity': a virtue here, as identified with its own reward. 13. **curam animi**, 'real concern.' 13. **laudatio**, 'testimonial,' or witness to character. Cp. n. on *laudatoribus*, § 56. After this sentence the *laudatio* is read aloud.

197.—14. **Ex lacrimis**, cet. Ramsay well remarks that the orator has gone rather too far in his attempt to enlist the sympathies of his audience, even if we allow for their excitable Southern temperament. 16. **age**, singular, as in § 82, where v. n. 20. **Ferentani**: cp. Horace's (quicunque) arvum | pingue tenent humilis *Forenti* (so spelt, *C.* iii. 4. 16). Ferentum (modern Forenza) lay on the borders of Lucania and Apulia. Cp. crit. n. 21. **Marrucini**, in the far north of Samnium, on the coast: Luceria and Teanum, towns of Apulia: Bovianum, capital of Samnium, taken by Sulla B.C. 89.

198.—25. 'Those who are landowners, men of business, or graziers in the district of Larinum.' For *res pecuarias* cp. crit. n. 26. **honesti . . . splendore praediti**, 'respectable men, and eminent in their own station.' For *splendor* v. Gloss.

LXX. 33. **omnium ornatissimum**: v. Gloss. 'Whose virtues and graces are all his own.' **huius causa**, cet. 'Working in the cause of Cluentius, he never closed his eyes for nights and days, and was still instructing me in the circumstances of this case, when he brought upon himself a serious and dangerous illness.' **Page 76**, l. 3. **capite**, v. n. on § 67. 5. **verecundia**, 'reserve.'

199.—9. **meumque . . . laborem**: not the exceptional use of *que* which appears in § 196, the three preceding words form one member of the series—'the devotion *of these men*, *my* exertions, *your* equity.' 10. **totam hanc causam vetere instituto solus peroravi**: (1) 'according to the ancient practice, single-handed I have pleaded this whole case from beginning to end.' The reference is to the fact that 'in the earlier period of forensic pleading, it was the practice for a *patronus* to conduct the whole case intrusted to him single-handed' (Ry. *Rom. Ant.* p. 312). At a later period there were several *patroni* (three, four, six, and even

twelve) for the defence. Thus Murena was defended by Cicero, Hortensius, and Crassus. Here *vetere=antiquo*, as in §§ 76, 107, 129, *vetus disciplina*, and *Cael.* § 73, voluit *vetere instituto* . . . industriam suam a populo Romano ex aliqua inlustri accusatione cognosci. In his earliest speeches Cic. uses *antiquus* always in a good sense, *vetus* generally in a bad: *e.g. Rosc. Am.* § 27, vestigia *antiqui* officii, *ib.* § 61, *veterem* tuam illam calliditatem. (Cp. Bradl. *Arn.* p. 355 n.) No argument, however, can be drawn from any such distinction here. For *peroravi* v. Gloss. (2) The words have been differently taken: 'I have pleaded this case from beginning to end single-handed, *as I have been wont to do*' (P.), *i.e.* 'according to *my* old practice': surely a doubtful rendering of *vetere instituto*, although it has the support of Manutius [and Mr. Roby]. *Peroravi* in this case probably means 'have summed up the whole case,' as opposed to 'singillatim crimina purgare': cp. its use in Tac. *Ann.* ii. 30, where it is said that, a contention having arisen between four persons for the 'ius perorandi in reum,' one of them gains his point by undertaking 'singillatim se crimina obiecturum,' 'to bring forward each charge singly.' And the words would refer to what was now a prescriptive right of Cicero's, his always speaking last of the advocates engaged on the defence. Cp. Mr. Reid's Introd. *pro Balb.* p. 14. But this case, in which Cic. alone is retained, is *different* from a case such as that of Sestius, in which (though he *perorat*) he is retained along with others. For this and other reasons I prefer (1). The passage is quoted by Pliny to prove his hypothesis that Cic. epitomised his speeches before publishing. 'Idem pro Cluentio ait, se totam caussam veteri instituto solum perorasse et pro Cornelio quadriduo egisse: ne dubitare possimus, quae per plures dies, ut necesse erat, latius dixerit, postea recisa ac purgata in unum librum . . . coarctasse,' *Ep.* i. 20. Here possibly *ut necesse erat* is Pliny's interpretation of *vet. instit.* 12. **quam caecam**, cet. 'You see her swept along by the blind forces of cruelty and crime: her lust no sense of infamy has ever curbed: her distempered spirit has most grossly perverted every claim which humanity acknowledges: she is too demented to bear the name of human being, too violent to bear that of woman, too heartless to bear that of mother.' **scelere ferri**: cp. § 12, ferri libidine, with n. *Sest.* § 111, latus odio. 14. **hominum**, used without reference to sex, as sometimes German *mensch*, Greek *ἄνθρωπος*: Ry. quotes *Eur. Hipp.* 472, ἀλλ' εἰ τὰ πλείω χρηστὰ τῶν κακῶν ἔχεις, | ἄνθρωπος οὖσα κάρτα γ' εὖ πράξειας ἄν: and *ad Fam.* iv. 5 (Ser. Sulpicius' letter of condolence to Cic. on the death of his daughter Tullia), quae si hoc tempore non diem suum obisset, paucis post annis tamen ei moriendum fuit, quoniam *homo* nata fuerat. 18. **uxor generi, noverca filii, filiae pelex**: in *Orator.* § 107, Cic. dwells with satisfaction on this splendid specimen of his matured powers of invective—ab hac indole iam illa matura: 'uxor generi . . . pelex.' 20. **ad**, 'in the way of,' lit.: cp. § 183, ad fraudem callidi.

200. liberum, 'of a son': plur. of vague expression, presenting the type rather than the individual. Cp. § 31, fratris liberos vita privavit, note. 24. **orbata laetetur,** a fine paradox. 25. **pudorem, veritatem virtutemque**: cp. § 196, first note. 26. **levate hunc aliquando supplicem v.,** 'it is not too late to raise up the suppliant who kneels before you, after these years of groundless prejudice and peril.' *Supplex*, prop. 'with bended knee': so *supplicium* is used both of capital punishment (received in a kneeling posture), and, sometimes, of supplication. 28. **flammam** invidiae: cp. § 4, quasi in aliqua perniciosissima f. atque in communi incendio. 30. **posita sunt in vobis omnia,** 'whose all is in your hands': v. Gloss. *pono*. 31. 'Whose deliverance many wish, you alone can effect.'

201.—Page 77, l. 2. **condonetis,** 'sacrifice.' Cp. § 109 n., § 195, ne huius honestissime actam vitam matris crudelitati condonetis.

LXXI.—3. **si qua calamitas,** cet., dubitanter loquitur, ne quid a iudicibus contra leges timere videatur. 4. **ne,** 'assuredly': as in *Phil.* ii. § 3, ne tu, si id fecisses, melius famae, melius pudicitiae tuae consuluisses. Sometimes wrongly spelt *nae*. 9. **fortassis**: for this archaic form cp. § 201, crit. n. **prosequi,** of one following a funeral, as in *Ov. Trist.* i. 8. 14, dure! nec exsequias prosequerere meas? Used also generally as the Greek *προπέμπειν*, 'to escort.' 10. **nunc,** 'as it is,' contrasting the actual with the imagined: cp. § 120 n. 11. **luctum,** prop. grief as expressed by external signs, and especially by the dress. In the case of a conviction, Cluentius would speedily be 'in mourning' for his own living death: for such in effect would be the *aquae et ignis interdictio*. Cp. what Ovid says of his own house as it appeared on the eve of his banishment:

> quocunque adspiceres, luctus gemitusque sonabant:
> formaque non taciti funeris intus erat (*Tr.* i. 3),

and also § 170, n. on exsulis testimonio.

202.—15. **putemus,** consecutive subj.: R. 1680, r. 704. 16. **ut quisque crudelissime oppugnatur, eum lenissime sublevatis**: a proportion is expressed, as in § 57, ut quisque [morbus] est difficillimus, ita medicus nobilissimus quaeritur, where v. n. A terser form of proportional sentence appears in Sall. *Catil.* viii., prudentissumus quisque maxime negotiosus erat. 14. **nemo huic tam iniquus . . . vos, qui aequi estis omnibus**: 'no one, if we except the mother that bare him, has been so malignant towards him that we may not believe his resentment to be now fully satisfied: you, who are just and benignant towards all.' The antithesis of *aequus* and *iniquus* must not be overlooked. The words are difficult to translate: *aequus* combines the ideas of *justice* and *benignity* as no modern word can do, now that the idea of justice has been purged of everything emotional, and the rights of the individual are conceived of as something inalienably his, not by grace of some one else,

but by the law of his being and that of the society in which he exists. 20. **vestrum est . . . clementiae**: 'on you this charge is laid, gentlemen, as men of self-respect and humanity.' For **dignitatis** v. Gloss. 22. **mortalibus** = *hominibus* in the widest sense: cp. § 148, ubi omnes mortales adligat [lex], with note. Cic. thus uses the word only with an epithet such as *multi* or *cuncti*, but Sall. without any such limitation. 24. The contrast between the turbulent public meeting and the sedate court of justice, the former governed by prejudice, the latter sifting false charges and true, is the characteristic chord which closes, as it began, the speech for Cluentius.

CRITICAL NOTES.

INTRODUCTORY NOTE.

In the editions of Cicero's works issued between the years 1472 and 1826, the latter year being that of the first edition by Orelli, the text of this speech, which we may call the Vulgate, was gradually constructed. It is based on the testimony of the majority of extant MSS., supported largely by that of the editions of Lambinus (the first in 1566, the second in 1584), Gruter, and Graevius, editors who had among their authorities some MSS. which have since disappeared.

The edition of Classen, published at Bonn in the year 1831, marks an epoch in the history of the text of this speech. He was the first to discover that the MSS. whose evidence is wholly or in part available to us represent two recensions of the text, of which the inferior one had unfortunately gained currency, and he was the first to vindicate the superior authority of the other recension by a careful collation of its manuscript sources, which, as far as it went, left little for later editors to do.

The verdict of Classen has been accepted in all essentials by later editors of Cicero; that is by Baiter and Halm in their second edition of Orelli's Cic. (Zürich, 1854); by Mr. Long in his edition of the Speeches (1856); by Klotz in his successive editions, that of the Speeches (1835), the first Teubner edition of Cic. (1856), and the second (1882); by Baiter and Kayser in their edition of Cic. (1860); lastly by C. F. W. Müller (Teubner ed. 1885).

The only advocate of the Vulgate text (in its main features) has been Prof. W. Ramsay of Glasgow, whose edition of the speech has been revised with little or no alteration by Prof. G. G. Ramsay of Glasgow (third edition, Clarendon Press, 1876). His introduction, especially § 13, should be consulted for an able defence of the old text against the attacks of modern editors.

The manuscripts upon which the labours of Classen are based are the following :—

S (Classen's A), found in the Royal Library at Munich, whither it had been taken from Salzburg. It was there collated for Classen at the re-

quest of Niebuhr. It is written on large parchment in a beautiful hand, and belongs to the fifteenth century. Halm has since collated it.

T (Classen's B), in the Laurentian library at Florence. Collated first by Lagomarsini, 1748. Niebuhr pointed out to Classen the importance of its variations from the Vulgate, and this led the latter to make inquiries leading to the discovery of MS. from which it differs for the worse in flaws and omissions.

P (Classen's C), the Turin palimpsest, was discovered by Peyron in the Royal Library at Turin, superscribed with a work of St. Augustine. It consists of 56 leaves of parchment, and contains fragments of ten speeches and of the *Ep. ad Fam.* Twelve of these leaves belong to the *Cluentiana.* It is probably of no later date than the fifth or sixth century. Classen found that it sometimes confirmed T, where no other MS. did so. The parts of the speech for which we have it are always exactly noted below; roughly they are—

§§ 1-7	§§ 92-94
18-24	101-103
32-38	129-131
74-78	145-147.

Stray confirmations of the text of ST may be found elsewhere; in the references which we have to the Codex S. Victoris in older commentators (Sylvius, Lambinus probably, and Gulielmus, who collated it), to the eight Palatine MSS. by Gruter, to the two Codd. Francii by Graevius. Of these the first-named Codex seems to have been the most valuable.

I have also thought it worth while to note the corrections by a second hand in b, described by Classen as 'Cod. S. Marci, n. 106, Lagomarsinii 6, chartaceus.' They represent an early emendation of the Vulgate recension from the better recension, and are a testimony to the latter of some value.[1]

Besides these MSS. there are others less authoritative, and representing on the whole the Vulgate recension. These are—

F (Classen's d), fifteenth century, parchment: described by Class. as Lagomarsinii 1, formerly in the Library of St. Bartholomew at Fiesole. Without *lacunae.*

M (Classen's p), eleventh century, parchment; Lagomarsinii 64, in Longobardic characters: in the Laurentian Library. Has *lacunae.*

Müller refers to another MS. which he describes as Cod. Helmstad. n. 304. Its readings are to be found in Wrampelmeyer (Progr. Clausthal, 1881), and are generally those of FM. I have referred to it occasionally as W.

The quotations in Quintilian and the grammarians, which are numerous, will be found worthy of attention (v. especially §§ 15, 32, 166, 167).

In the notes which follow I have attempted almost nothing in the way

[1] Cp. notes on §§ 174, 178.

of original emendation. Their aim has been to supply the student with data sufficient to enable him to form an independent judgment on the value of the chief MSS. and on the variants which they supply. Some prominence has been given to considerations which, it is thought, do not always receive the attention due to them. These are, in the first place, the value of a parallel passage in confirmation of any given reading, particularly if it be taken from the same speech or a speech belonging to the same period of the author's literary life. This principle is illustrated in the notes on § 18, *reticeri*, § 58, *ut videretur*, § 78, *Staieno*, § 112, *quaero*, and elsewhere. In the second place, grammatical considerations, or rather considerations of Ciceronian grammar, may turn the scale sometimes. Cp. the notes on § 9, *ni;* § 33 (the 'vivid construction'); § 122, *iubeo*, with simple infin.; § 141, *et ipse*, etc. Thirdly, there are rhetorical considerations, such as the pointing of an antithesis. Examples will be found in § 16 (*matre* repeated), § 32 (*plures* rejected as a piece of false antithesis), §§ 146, 157, and so on. These and other considerations will be found, I think, as a general rule though not invariably, to make for the text of ST, to which accordingly I have on the whole adhered. Unfortunately we cannot rely implicitly on ST, or even on P; all three are capable of glaring blunders.

Lastly, the student may, if he has the mind, gather instances of most of the errors and confusions common in MSS. in the course of a careful examination of the text of this speech. For example, in §§ 20, 23, 30 we have instances of the loss of initial *e*, *M*, *e*, respectively after final *e*, *m*, *e*: this is 'haplography.' Compare § 140, quasi si. Again, in § 37, pernoctarat **et** (FM) is a case of 'dittography.' Then again we have the confusion of *cum* and *quam*, §§ 68, 181; *ipso* and *isto*, *cum* and *tam*, § 140; *ut* and *ne*, § 150; *sit* and *est*, § 148; *ad* and *apud*, § 171; *adhuc* and *ab hoc*, § 183; *vobis* and *nobis*, § 184; superlative and positive, § 202; indic. and subj., §§ 149, 181; act. and pass., § 183; sing. and plur., § 196; the confusion of endings *-ant* and *-at*, § 72; the loss of *est* after *-us*, § 181. These instances are taken at random, but the list might be enlarged and arranged to form a useful 'gradus ad criticen.'

LIST OF ABBREVIATIONS.

Man. = Manutius.	Ry. = Ramsay.
Lamb. = Lambinus.	Kl. = Klotz, *ed. alt.*
Gar. = Garatoni.	Bait. = Baiter and Halm, 1854.
Or. = Orelli, 1826.	Kays. = Baiter and Kayser, 1860.
Ern. = Ernesti, 1776.	Müll. = C. F. W. Müller, 1885.

CRITICAL NOTES ON THE TEXT.

Page 1, INSCRIPTION. **Habito.** So SF and almost all others. **Avito,** first suggested by Cuiacius, from a mistaken impression that the Florentine MS. of the Pandects (48. 19, 39) reads thus, and also because the name is common in Inscr.; first introduced into the text by Lambinus in his edition of 1566. But Habitus appears as a Roman cognomen in more than one Inscr., also in the Fasti Capitolini, thus 'A. VIBIVS C. F. C. N. HABITVS' (consul of the second half-year A.D. 8). Moreover, it is read in all MSS. of Quintilian in iv. 2. 16, v. 10. 68. (V. Bait. crit. n. ad § 201.)

I. 1.—The Turin palimpsest (P) contains § 1 to 'quam aequum iudicium' in § 7. 4. **alteram,** P.

2.—10. **pars est ea quae,** STM; **pars quae,** F. The **et** in the text is due to P alone. Ramsay, following Lambinus and Orelli, reads **pars ea quae.**

3.—16. **in hac difficultate,** PS (pr. m.) T; **in hac tanta diff.,** R, including S (sec. m.), and so Ry. 18. **omnium,** P. So Klotz, Müller. 22. **vos,** STF; **nos,** PM, and some inferior MSS. 'Quaenam haec est iudicum inter se disceptatio? Ii vero tabellis tacite sententiam ferebant neque inter se, verum inter accusatorem et reum disceptabant. Cp. Liv. i. 50, Plin. *Ep.* vii. 15, *de Inv.* i. 3. Quod autem sequitur **a nobis** de Accio simul et Tullio dicitur; esset enim, si de se tantum ipso a Tullio diceretur, absurdum. Legendum **inter nos,** ut habet codex meus.' Garatoni, quoted by Baiter. This reasoning 'is by no means convincing. It is quite true that the jurors voted by ballot, but this circumstance would not preclude discussion' [Ramsay]. The sentence contains a careful antithesis, 'In the matter of direct charges, your practice is to throw the whole (omnem) burden of refutation upon the advocate: in the matter of prejudice, to supplement the advocate's imperfect statement from your own *duly debated convictions*' (this is the sense of 'inter vos disceptare,' which is chosen in preference to 'iudicare' in order to contrast independent activity of mind with mere receptivity: **inter vos**)(**a nobis**). I therefore follow Class. and Ry. in reading **omnem . . . inter vos.** **Page 2,** l. 5. Classen would omit **ac.** Baiter brackets **ac sine,** which Halm and Garatoni omit. It would be better to bracket **sine** alone. But even this change practically lacks *all* MS. support. Prof. Nettleship conj. **vestro talium virorum** = 'of such men as you.'

4.—7. After **vertam** Klotz introduces **iudices** from Martianus Capella (v. § 523), and Romanus Aquila (*de Fig. Sent.* § 10), who both cite the passage in this form; which Gar. approves. But Quintilian (ix. 2. 19, and 4. 75) supports the MSS. In the same line Quint. omits **illam.** 8. Some inferior MSS. omit **esse.** So Ry.

II. 5.—15. **veritas,** PSTM: **falsitas** (F, and early edd.), a misguided

correction which destroys the antithesis. 21. Quint. ix. 3. 85, om. **in iudiciis**, which Pluygers (*Mnemos.* 7. 387) wishes to bracket.

6.—25. **huic** ST. Same variant in same MSS., § 142. There the dative might depend on **graviorem**; here its reference would not be so simple. Besides, **huc** will anticipate the words 'nisi *hic* ex ipsis causis iudicabimus.' Classen therefore prefers **huc.** 28. **si**, ST, b (corr.), Classen, Bait., Kays., Ry.; **ac si**, R, Klotz; Müll. brackets **ac**: v. explan. n. Baiter conj. **sed**. Pluygers considers **si . . . deferemus** an interpolation. 29. **oratio labefactabit**, PST b(corr.), Codd. Lambini and S. Vict.; **ratio lab.**, FM, Gruter and Graevius (after seven of the Palatine MSS. on which they mainly rely). For the collocation, cp. *de Fin.* iii. § 10, ratio nostra consentit, pugnat oratio. *Sull.* § 4. 33. **sint**, PS, **sunt**, R, om. T. **Page 3**, l. 1. om. **ad** ST, and so Class. **meque**, P; **me**, ST; **et me**, R. 2. **peroraro, tum**, PS, Lamb., Or., Class., Ry.; **peroraro**, M.; but T exhibits a lacuna **per . . . tum**: the variants **peroratum erit**, F, **p. fuerit**, **peroratum**, which appears in various inferior MSS. and earlier edd., are attempts to fill it. 3. For **animo**, a few MSS., Lamb. and other edd., have **a me**. Orelli restored the better reading, which Class., Bait., Ry. have adopted (also Kays., bracketing). Klotz[2] has 'praeteritum **a me, aequo animo** requiratis.' Gar. (quoted by Bait.) annotates: 'Neque *a me* neque *animo* adesse velim; satis est *requiratis*. Certe causa perorata testes interrogabantur, non defensor. Suspicor *a me* esse glossam ad v. *praeteritum*, deinde *animo* subiectum ex praecedente *cogitatione*.' Certainly **animo** seems worse than otiose: we want rather **aperte**, to contrast with **taciti** above. But this cannot be got out of the reading **animo**. The remedy may be, either to prefix **aequo** (as Klotz), or to expunge **animo**. I would suggest **omnino** as a possible correction, meaning 'by all means.' **omnino**, written omino, might become **omino**, then **onimo**: and this (a *vox nihili*) could be emended **animo**. In § 17, *animum* and *omnium* are variants for *hominum*.

III. **7.**—7. **qui**, PS (m. pr.), T, Or., and Klotz; **quis**, R, Lamb., Class., Ry.; v. explan. n., and cp. crit. n. § 103, l. 12. 12. **aliqui**, TM; **aliquis**, R. 13. **si quae**, ST; **si ea quae**, R, Lamb., Or., Ry.

8.—18. **dico**, STFM, Class., Bait.; **dicam**, a few MSS., Lamb., Or., Ry. 23. For **dicitur**, **dicatur** (with i above), S; **dicatur**, T. 25. **ipsius**, ST; **istius**, R. I have followed Kayser in bracketing **veteris**, and reading **ipsius**, which 'contrasts the "actual issue" with the existing prejudice' (Peterson). **Veteris** was a gloss to distinguish **criminis** here from *veneficii crimina* of § 1. 29. **sicut**, ST; **sicuti**, R.

IV. **9.**—31. **inimicum**, ST, Class., Bait., Ry.; **inimicum suum**, R, Lamb., Or., Klotz. 32. **illius caput**, ST, Class. **Page 4**, l. 7. **temptatum**, S; **contemptum**, T.

10.—17. **satis facere**, om. ST, cp. § 51. 19. **ni**, ST; **nisi**, R. 22. **et pro vivo**, STFM, Class., Bait., Müll.; **et vivo**, Lamb., Or., Ry. The

latter reading may seem the more symmetrical, answering to *contra damnatum et mortuum.* But the repetition of the preposition really contributes to the clearness of the antithesis: *incolumi et vivo* might readily be taken for one of Cicero's duplicate phrases, in which the idea conveyed by two words is a single one. Just below (l. 26) the preposition is similarly repeated: cp. § 3, l. 5 n.: a writer is apt to fall into the same form of expression twice: cp. § 9, l. 7, with § 10, l. 18. 24. **hic . . . dicimus . . . accipere**, ST, Class., Bait.; **huic . . . dicitur . . . accedere**, R, Or., Lamb. (writing **accidere**), Ry. Here **offensio** evidently means a '*blow* in the shape of an adverse judgment,' damnatio. Therefore Classen's objection against the latter reading, that **accederet** implies Cluentius had already suffered a similar reverse, is conclusive. 25. **molestia**, ST b (corr.); **dolore**, R.

11.—31. **petam**; all MSS.: cp. § 58, alte petito prooemio; **repetam**, Lamb., Or., after *Quintil.* iv. 1. 79, 'perhaps rightly' (Prof. Nettleship).

V.—Page 5, l. 1. **Habitus**, STFM, *Quint.* iv. 2. 130. 3. om. **facile**, ST, *Quint.* l.c. 4. **Sylla**, STM.

12.—9. **eae**, S; **hae**, R. 11. **scelere coniuncta**: so all MSS.; Lambinus read **convicta**, Graevius **convincta** (which he thought he saw in his MSS.), doubting the abl. construction of **coniuncta**, which is proved by *Phil.* v. § 20, and other ref. V. commentary. 12. **in omni causa**, ST, cod. Lamb., Class., Bait., Kays., Müll., Kl.; **nominis causa**, R, Or., Ry. Quintilian (*Declam.* ccclxxxviii. p. 790) omits. **Nominis causa** can only be defended on the principle 'potior lectio difficilior.' Ry. defends it on three other grounds: (1) 'Although the expression "in omni causa," in the sense of "in tota hac causa" may be defended, this use of *omnis* is rare, especially in Cic.' (2) 'Nominis causa affords a plain and satisfactory meaning.' (3) 'In the first part of the sentence Cic. takes credit, as it were, for his forbearance in consenting, even for form's sake, to give her the appellation of mother, and then adds that this forbearance on his part will in reality tend to make her guilt appear more odious.' Argument (1) is nugatory, for the occasional use of *omnis*=totus is not denied. Cp. § 1, l. 1, explanatory note: and add to the exx. there *Rosc. Am.* § 143, haec omnis oratio. Arguments (2) and (3) may be taken together. *Nominis causa* could not mean 'for *form's* sake' (dicis causa). If we are to accept it, Orelli's interpretation (ap. Classen) is the true one: 'quam aliter nominare non possim,' 'for want of a better name.' Then the **enim** of l. 15 is decisive against this reading. For Cic. is made to say, 'I will call her *mother*, because I do not know what else to call the relationship (it adheres to her through all): *for* the name of mother is the most effective which I can select for my purpose—to excite your horror.' Also the repetition of **mater** in the first part is pointless unless it is more than a 'name.' With **in omni causa** all is clear and coherent. Ernesti and Lemaire bracket the words **nominis causa**, regarding them as taken from *naturae nomen.* 18. **iudicabitis**, S. 20. **neque**: **quo**

modo, T. 21. **cupiditate** : **civitate**, S pr. m. **continebat**, ST; **continebatur**, R. (A middle voice: cp. R. 1417. 1, r. 566. 1.) Baiter suggests **se continebat**, referring to *leg. agr.* ii. § 97, *Parad.* iii. § 21. 23. **non pudicitia**, om. ST: so Kayser, and Baiter brackets. 'Propter similitudinem praecedentium verborum (*non pudor*), facile excidere potuerunt, et ad sensum satis ab iis differunt,' Cl.

13.—26. **his**, S. 30. **se sine scelere**, ST; **sine scelere se**, R.

14.—**Page 6**, l. 4. **laetitia**, ST; **laetitia ac**, R. 5. **libidinis diutius**, ST; **libidinis. Itaque diutius**, R, followed by Class., Ry., Kl., and Müll. (incl. **itaque**). Baiter connects the words **victrix . . . libidinis** with the following sentence, omitting **itaque**; so also Kayser, but bracketing **non libidinis**. 10. Pluygers would excise **omnium**, which Graevius had already done on the authority of two codd. But *Quint.* iv. 2. 121 quotes the passage as we have it; and there is a manifest antithesis between *omnium* and *nullis*.

VI. 15.—13. **nonne**, STF and *Quint.* iv. 2. 105 (best MSS.); **non me**, M; **non** a few inferior MSS. **timuisti**, ST and some inferior MSS., and this is Classen's reading; **timuisse**, R, supported by *Quint.* l.c. and quoted by Donatus on Ter. *Phorm.* ii. 1. 2. 15. **cubiculi** : **cubilis**, T.

16.—19. **dedecus**, ST, and Class., Bait.; **dedecus iam**, R and Ry., who defends *iam* as expressing that 'the disgrace was no longer confined to Sassia individually, but *now* extended to the whole family'; the order of the words is against this. No doubt, as Class. suggests, **iam** is due to the following syllable **fam.** 20. **modestia**, T. 22. **esse**, ST b (corr.); om. R. 23. **matre**, om. ST. But there is a rhetorical precision in the reiteration of the word, *matris . . . matre*: cp. *infr.* § 17, *hominum . . . hominum.* **ne quae** is a conjecture of Garatoni: ST reading **namque**, from which Class. conjectures **nam quae**: R giving **ne quam**, which Ry. adopts. But *probare suo iudicio* with a personal object is a curious expression, and **quae . . . poterat** comes in naturally to explain **tantis iniuriis ac tanto scelere.** Most edd. have adopted **ne quae.** 24. **ne ea**, T, indirectly supporting Garatoni's emendation. 25. **verum**, ST; **sed**, R.

17.—29. **in**, om. ST: but cp. § 4, l. 12, quasi in aliqua . . . flamma atque *in* . . . incendio, and § 3, l. 5, explan. n. 32. **qui** (STFM cod. Lamb.) **ad hominum pericula defendenda adiungerer** (ST b corr.): so Class., Bait., Kays., Ry. Most MSS. and older edd. read **quum ad amici pericula depellenda adhiberer.** We are indebted to ST for the recovery of the true text: which is supported by § 51, si . . . hominum periculis non defuissem; § 157, ut omnis mihi cura et opera posita sit in hominum periculis defendendis. Cicero says that he, professionally conversant as he is with the natural feelings of humanity, is the last man in the world to ignore the natural sentiment, that the case of a son against his own mother should not be pressed. But if we read *quum . . . amici*, the argument tells the wrong way: 'on an occasion on which I am

called in for the defence of a *friend* (and therefore might be justified in giving Sassia no quarter).' There is force in the repetition of *hominum*; it gives the key-note of the argument. Cicero nowhere speaks of Cluentius as 'amicus.'

18.—Page 7, l. 6. **profectum,** STM and a number of inferior codd., Class., Bait., Kl., Kays., Müll.; **perfectum,** F, which Ry. adopts, explaining thus—'*conflatum* is the crude metal heated in the furnace in order to be forged or smelted, *perfectum* the finished work produced from it.' But here the point to be asserted is that Sassia *originated*, was at the bottom of, every one of her son's trials: for this sense of conflatum (with which profectum is synonymous), cp. explan. n. on § 9. The variant *perfectum* may be due to the slight harshness in the double use of *a* matre with the two participles, 'by' and 'from.' 8. **sed vero** (ST and inferior codd.) **sic agitur** (SF), **ut prorsus reticeri nullo modo possit** (ST): so Class., Bait., Kays., Halm, Kl., and Müll. (reading however **reticere**). **Sed ea vero** (M) **sic agit** (TM) **ut prorsus reticere** (R) **non possit,** which Ry. adopts, explaining it to mean 'but Sassia is acting in such a manner that in no way is he able altogether to refrain from publishing her guilt'—which is satisfactory as far as the sense goes; yet in smoothness and finish it seems unworthy of the highly-wrought passage in which it is imbedded. *Agit* indeed has good MS. support; but the change of *agitur ut* into *agit ut* is easily accounted for; the gloss *ea* would then creep in (which reads like careless writing after the *ea* in the preceding line, which is in a different case: and *illa* is wanted). The impersonal **reticeri** is supported by the similar words in § 17, de turpitudine matris dici vix oportere. 12. Madv. (Append. *disp. de Asconio*, p. 49 *sqq.*) conjectures **illa omnis testium copia.** If any change were needed, it would be better, with Kayser and Müller, to bracket *accusatio.* 13. **huius opprimendi . . .** Here the Turin palimpsest again comes in, as far as § 24, *hominem ac minis.* 14. **instituit accusatores,** F and some inferior MSS. Same variant, *Phil.* xi. § 33. 18. **sin,** PST; **sin autem,** FM. 19. **debebitis,** P; **debetis,** R.

VII. 19.—24. **fuerat,** T. 25. **ac,** PSTM; **et,** R. No absolute rule can be laid down for the choice between *ac* and *et.* There is a tendency to use *ac* or *-que* rather than *et* in the case of a hendiadys or a stereotyped conjunction of words (such as terra marique, sometimes terra ac mari). Cp. § 139, l. 15 n.

20.—27. **ac,** P and others; **et,** ST. (V. previous note.) **retineretur,** ST b (corr.). 30. **hinc,** T. 32. **evitaret,** ST, Class., Ry.; **vitaret,** R, Bait., Kays., Kl., Müll. 33. **iis,** so Bait., Klotz, Ry. (**eis,** Kays.), after P. Manutius; **his,** codd. omnes. Cp. § 49, where *eis* is read, with the variant *his* in many MSS. including ST: also §§ 12, 13 cr. nn. Page 8, l. 1. **timeret,** ST. **potuerit,** ST and some of Lambinus' codd.; **debuerit,** R, Bait., Kl., Kays., Ry., Müll. Lambinus conjectures 'neque accusator timere debuerit neque reus sperare potuerit.' Classen

says—'Qui timere sive sperare non debebat, is tamen fortasse timet et sperat; utrumque fieri non potuisse, hoc utique demonstrandum erat.' 3. **Staienum**, P; **Scaienum**, ST; **Stalenum**, M and all edd. before Orelli. So in § 55. The name is formed from Staius, as Volusienus from Volusius, Labienus from Labius, etc. Even the best MSS. vary in the orthography of these proper names. Thus S gives **Dianea** here, but everywhere else **Dinaea**.

21.—6. **M. et N. Aurios**, P sec. m.; **M. N. Aurius**, P pr. m.; **M. Aurium et Numerium Aurium**, ST b (corr.), which go on **et Numerium Magium**, a confusion with the previous praenomen, which, if we adopted the reading of ST, might be still more natural. The mistake recurs below, ll. 11, 13. 12. **postremo**: **postea**, P pr. m. 13. **heredem fecit**, PST; **fecit heredem**, R. 15. **interim venit**: **intervenit**, ST.

22.—20. **eis**, P; **iis**, M; **his**, STF, and many other codd. 22. **tamen**, PSTM; **tantum**, F and some edd.; Lamb. has **tum**. Cp. explan. note. 24. **HS cccc milia**, P; **quadraginta milia**, ST b (corr.), that is about £340, which is too small; **XL milia**, F; **CCCCLIII**, M, which is the same as CCCCIↃↃↃↃ, *i.e.* 'decies,' £8500, which seems too large: not to speak of Lambinus' correction, **HSCCCCIↃↃↃↃ millia**, *i.e.* £8,500,000, a large fortune to amass in an Apulian *municipium*! It is best to follow P implicitly in such a case. 26. **his**: **iis** conj. Garatoni, adopted by Orelli. But the pronoun *his* 'rem praeteritam quasi ob oculos ponit,' as Classen says. 28. **vestigandum**, ST, Class., and Ry., a Ciceronian word: but cp. l. 21, *investigarent*. In the same line only ST read **M.**

VIII. 23.—33. **M.** introduced into the text by Baiter: cp. l. 28. **Page 9**, l. 3. **adolescentis**, PST; **adolescentis propinquos**, R, evidently taken from § 22, l. 19. 4. **quod**: **cum**, ST b (corr.). 6. **A.** om. PST. Three inferior MSS. read **M. Aurius**: which P reads below, l. 14; and which may be the true reading. **perpropinquus**, T; **perpropinquos**, P; **propinquus**, R. **multis**, only given by PST; 9. and so **esse.**

24.—10. **agrum Gallicum**; **Galliam**, ST. 12. **renuntiant**: **nuntiant**, ST. 14. CUM MAURIUS IS P. (the M may be carried on from CUM); **cum Aurius is**, S; **cum is**, T; **cum A. Aurius**, R. 15. **ac minis**: here P fails us again.

25.—17. **illam autem fugam**, ST; **illam fugam autem**, FM; **illam fugam et**, R. 18. **nunquam se . . . legibus**, om. ST; which in consequence insert **se** in the next line. Kayser follows them. 19. **inermum**, M and a few other MSS., which has been replaced in STF by the common form **inermem**. Four MSS. give **in Larinum**, a corruption of *inermum*, which form occurs (with the same variant) *Caec.* §§ 60, 62, 63, 93. Cp. exanimis and exanimus, hilaris and hilarus (§ 72.) 22. **tres praeterea**, ST; **alios praeterea tres**, R, and so Cl., Ry. *Alios* is pleonastic. 25. **et eius Lucium filium**, ST; **et eius C. filium**, R. **Vibium**, ST; **Jubium**, F; **Virium**, M. 29. **tenebantur**, ST; **terrebantur**, FM, and older edd. 30. **potuisse arbitraretur**, all MSS. but one: which could

only mean 'who is there who could (now) imagine that he could (then) have been acquitted?' or perhaps 'could have imagined at that time that he could be acquitted.' But for the latter rendering (alone in sense satisfactory) Madvig's emendation **posse arbitraretur** is on syntactical grounds indispensable. (Cp. his similar emendation in § 133.) Edd. have generally (Bait., Kays., Müll., Kl.) preferred Weiske's conjecture **potuisse arbitretur**, which is confirmed by one Laurentian codex (Classen's a), and adapts itself better to the preceding *quis est*. A variant *arbitrarentur* for *arbitrentur* appears in *Caec.* § 5: so too in §§ 96, 156 of this speech.

IX. 26.—Page 10, l. 3. **postulat**, T.

27.—8. **domum**, omitted by several inferior codd.; two of the Palatine MSS. have **dexteram** according to Gruter, who suspects that the true reading is some third word such as *villam*. Baiter, referring to § 188, Aurium Oppianici esse opera proscriptum occisumque, finds additional reason for doubting the MSS.: Aurius perished neither by the hand nor in the house of Oppianicus. But this is, as Ry. says, hypercriticism. Cicero is speaking as an orator, not as a historian. The expression criticised is only a more highly-coloured rendering of the words of § 199, domum illam . . . scelerum omnium affluentem. 10. **se**, om. T. **iis**, S; **his**, R. 11. **domo** is suspected by Pluygers as faulty alike in sense and syntax. What Oppianicus did was to make room in his house by the murder of his sons, and this, according to Pluygers, is scarcely expressed by '*domo* remedium quaerere': he suggests **continuo**. Orelli also suspected corruption here, and suggested **quoquo modo**. 14. **Pappia**, ST. 16. **Teano**, ST. Bait. brackets **Apuli**, which seems to be omitted by Arusianus Messius, who quotes the passage thus, *in eo* (Teani ?) quod est ab Larino xviii milia passuum. **publicis** is inserted by all MSS. except ST after **ludis**.

28.—28. **optime**, ST and Wramp.'s codd.; **optima**, R (which Kl., Müll., Ry. adopt). Classen's argument is just—the question is not of the degree or quality of Sassia's hope: it is '*una* tantum et *certa* spes, scilicet amplioris hereditatis,' in which this murder most effectively (optime) confirms her. 30. **ita quod**: **itaque**, FM, and so Orelli; **ita quum . . . soleant**, Schülz. But **quod** is idiomatic Latin: v. explan. n. 32. **iucundum**, STM, Bait., Kays., Kl., Müll.; **iucundius**, R, Orelli, Ry. The latter reading gives what is only a spurious antithesis to *cupidiores*, 'more covetous [than they otherwise would be],' qualifying the censure: no such sense can be given to *iucundius esse duxit*: the censure of Opp. must be unqualified. ['Rather pleasant' might be said in bitter scorn. H. J. R.]

X. 29.—Page 11, l. 7. **auditis non . . . sine**, S. 9. **breviter a me strictimque**, so all but ST, which omit **a me**. But the antithesis to l. 15, a P. Cannutio, requires them. 10. **de** omitted before **quo** by ST. When the demonstrative antecedent has been governed by a monosyllabic preposition, the latter may be omitted before the relative, if the two are so closely connected that the same verb is understood. So *Rosc. Am.* § 127, in

quem hoc *dicam*, quaeris? non in eum, [in] quem vis [me *dicere*], v. Madv. *de Fin.* p. 71. But this rule does not cover the present passage. 12. **omnes**, ST b (corr.), om. R. Ry. argues that it should be omitted, because it 'destroys' the contrast with the corresponding clause—de eo quem odisse iam non potestis, by 'introducing the community at large.' But on examining the balanced clauses we find that each of the former set is amplified in each of the latter: *omnes* still *includes* the jurors ('illi'), 'they with every one else.' 15. **Cannutio**, ST; **Cannuntio**, F; **Canutio**, M.

30.—17. **posset**, ST. 20. **propriora**, ST and many inferior codd., including those of Lamb. **huiusce**, S, and in all probability T; **huius**, R. 21. **in memoria**, T pr. m. 26. **fuit**: **fuisset**, ST. 28. **emori**, ST; **mori**, R. The **e** lost by confusion with the termination of the previous word. '*Emori* Ciceroni est *misere mori*: sic *infra*, c. xiv. 42, accusare quoquo modo posset, quam illo modo emori maluit,' Class. Cp. § 187 n. 30. **repentinam**, ST; **tam repentinam**, R. **vocesque**, ST and inferior codd.; **vocemque**, FM and others. The plural is the more difficult reading, but (like *vociferatione*) it implies that the cry of agony was repeated.

XI. 31.—Page 12, l. 4. **Auria**: **Iulia**, ST; **Iuria** or **Viria**, M. 5. **putaretur**, ST b (corr.); **videretur**, R. 6. **illud quod**, STF and inferior codd.; **illa quod**, M; **illa et quod**, some inferior codd., followed by Graev., Ern., Or. Besides that this last reading is tautological, it obscures the main purpose of Opp., which was to remove the child which stood between him and his brother's inheritance. 8. **mortis**: Gruter wished to delete this word, and Schütz does delete it. I am tempted to bracket it. 13. **lucem**, ST; **propriam lucem**, R. 13. **nihil ei clausum**, om. S pr. m. . . . **Ei sanctum**, S pr. m. I bracket **clausum nihil**. 15. **custodiae t. potuissent**, ST; **custodia t. potuisset**, R. The plural, which is the harder reading, can only be attributed to the principle of 'concinnity': it answers to *liberos*.

32.—17. **secundis**, om. ST. Kays. omits; Bait., Müll. bracket; Classen retains. Quintilian (v. *infr.*) has it. 21. **Quanto est**: from this to § 38, l. 23, **triumvir constituunt**, we have P. **Quanto est . . . cruciatum**, *Quint.* viii. 4. 11, reading **vim atque cruciatum**: perhaps objecting to the hysteron proteron. But mors atque cruciatus appears elsewhere: *Verr.* v. §§ 72, 134, 138, 153. '*Mortem corporis* is at first sight a strange expression, but Cic. may have used it to heighten the contrast. Opp. killed his victim. The woman at Miletus survived the forced abortion.' H. J. R. ['This may possibly be right, *vim atque cruciatum* = violent torture. Cp. *Verr.* v. § 138, mortem cruciatumque, which perhaps = a death of torture,' H. N. ap. P.] 22. **iniuriam**, P. 26. **corpore**, S. **ipsa**, STP and inferior codd.; **ipsam**, R, including F. 29. Pluygers conj. Oppianicus **unus** inventus est. 27. **multos**, ST and Lambinus' MSS., Class.; **plures**, R, followed by Orelli, Ry., Bait.,

Kays., Kl., Müll. *Multos* would be a tasteless exaggeration: Oppianicus had killed two in one person; *i.e.* stating it as vaguely as possible to make the most of it, *plures*; 'more than one.' Some one introduced *multos*, thinking to sharpen the antithesis.

XII. 33.—29. **cognosset**, P; **cognosceret**, STF. **Cn.**: **Numerius**, ST. Cp. § 21, l. 6. 30. **isque cum**, P; **is qui** (om. **cum**), T; **is que**, R, which Class. and Ry. adopt, reading **esset et** for **esset** (which latter is Halm's correction.) 31. **adibitis** (sic) **amicis**, P; **amicis adhibitis**, R. **Page 13**, l. 3. **servare et**, P, Bait., Kays.; **servaret ut**, R, and so Class. and Ry. **salvum parere posset**: P has been credited (owing to an error of Peyron, its original collator) with the reading **parere et posset**. The real reading of P is **salvom parere posset**. S has **possit**, which is very likely right; cp. n. on l. 6, § 41, l. 23, § 49, l. 32, § 69, l. 24, § 134, l. 9, § 179, l. 5. 4. **erit** (here and in l. 10), ST b (corr.); **esset**, R. V. explan. n.

34.—7. **cuius**, PST; **cum eius**, R, so Ry., Lamb., Or. As Class. says, the relative is wanted to correspond to the pronoun **eum** in the apodosis. So in the corresponding sentence below, *quae* pecunia anticipates *eam*. **Cum** was introduced in order to justify the subj., which is sufficiently explained by the causal force of the relative. Cp. § 40, *cui . . . restarent*. 9. **non longe**, ST b (corr.), Class., Kays.; **longe**, R, Ry., Bait., Müll., Kl. Ry. however admits that the former reading has much in its favour, and 'may be interpreted so as to give additional force to the passage': he rejects it on the ground that the meaning given is 'too subtle for a public speaker addressing a jury.' A subjective test of this kind does not go very far: the subtleties with which §§ 28 and 32 close are surely more refined. (In §§ 47, 127 we have similar instances of the loss of *non* in MSS.) The gist of the whole passage is this: Magius had an inkling of Oppianicus' intentions, and provided accordingly. But how inadequate his precautions proved to be! His utmost foresight was short-sighted in the face of such enterprising villainy. There is a general parallelism between the sentences: *quia . . . ascripsit*—expressing the precautions of Magius—is answered by *quid . . . appellanda est*, expressing the audacity of Oppianicus. 23. Pluygers suggests **nondum debitam**, as in better keeping with praesentem. The money was only *due* after the delivery of the woman.

35.—19. **post viri**: **postulari**, P.

XIII. 36.—23. **Asui**, P; **Asini**, M; **Asinii**, F; om. ST. But in § 36, l. 1, **Asuvius** is read by PSTM, as in l. 30 M has **Asuvii**, and § 37, l. 12 P has **Asuvium**. This is doubtless the right form. 23. **Larinitatis**, P. 24. **recenti re fuit quam**, FM; **recenti re fuit et quam**, P; **fuit recenti quam**, ST; according to Graevius, the Palatine codd. have **quam clara tum recenti fuit**, which is interesting as the first deviation (**re** being dropped from its similarity to the first syllable of **recenti**), which was corrected into the reading of ST, which makes it intelligible,

by connecting **recenti** with **sermone**. The reading of cod. Franc. and Wramp.'s MSS., **quam clara tum recens fuit** (which gives the old vulgate reading **quam clara cum recens fuit**) was a less ingenious emendation. *τὸ ἁμαρτάνειν πολλαχῶς ἔστιν.* 24. **quam in omnium**, ST. 25. **Avillius**, PST always; **Avilius, Aiulius**, are other readings. **Larino**, PST; **Larinas**, R; Halm conj. **Larini homo.** **perdito a nequitiam** P. 27. **accommodata**, P, if we may trust the silence of Peyron, who collated it with the text of Olivetus. Arusianus Messius (p. 452, ed. Keil) quotes with **accommodatum.** The other MSS. have **accommodatus**: Class. and Ry. read it. The expression *ars* ad aliquid accommodata is unusual, this participle being generally applied as it is in § 79, *infra*. 32. **iniri**, STM, Lamb., Or., Class.; **inire**, PF, Ry., Bait., Kays. For the change of construction from pass. to act., cp. Madv. ad Cic. *de Fin.* ii., § 21, quid attinet luxuriosis ullam exceptionem dari aut fingere aliquos; *de Orat.* ii., § 177, proponi oportet quid adferas et qua re ita sit ostendere. It is generally after an impersonal verb; but v. Liv. ix. 15. 5, quoniam ab hostibus in se aequa statui quam in se ipsi ferre maluerint. The passive form gives generality to that part of the statement. 33. **consilium**, STFM; **id consilium**, P (if we may trust the silence of Peyron). Ry. omits **in** before solitudine (surely a printer's error). **Page 14**, l. 1. Momms. conjectures, and Kl. and Müll. adopt, **posse se**—unnecessarily. V. explan. n. here. Müll. in crit. n. on *Caec.* § 25 gives a long list of places in which the pronominal subject is omitted by all or by some MSS. They cannot all be so readily doctored: *e.g.* § 55, l. 3; § 162, l. 14. 3. **secutus est**, ST. **quibus conviviis**, om. ST. 6. **dicere mihi**, PSTM; **mihi dicere**, F, Ry. Pluygers brackets **mihi**: cp. § 107, longum est . . . ita dicere. But it is unlike Cic. to leave the subject of the part. to be supplied.

37.—8. **ubi pernoctaret, ibi**, P; **ibi pernoctaret, ibi**, ST, Ry., and Class.; **ibi pernoctaret et ibi**, FM; a few codd. (the Palatine and cod. S. Vict. of Graevius and those of Wramp.) have **ibi pernoctaret et ibidem posterum commoraretur.** The **et** is due to dittography: its intrusion will account for the easy change of **ubi** to **ibi** in FM. Müll. conj. and reads **ubi pernoctarat, ibi**; Kayser conj. **ibi pernoctaret ibidem diem post. comm.** (Lamb., followed by Ern., Or., and others, had already conjectured **ibi pernoctaret et ibidem diem post. comm.**) Probably Müller's is the true reading, though I have hesitated to admit it in face of the testimony of PSTFM. [Mr. Roby thinks **ubi pernoctaret** indifferent Latin: and would read as Müll., or else as Class.] 12. **appellat ipse. Testamento**, P; Bait., Kl., Müll., **appellat**; **ipse testamento**, Lamb., Or., Class., Ry. But Kayser omits **ipse** here, inserting **ipse** after **Avillius** and before **ilico. Disceditur** PFM: **discedit** ST. Classen objects to the reading of P on the ground that *ipse* lacks force at the end of the former sentence, while it is 'almost indispensable' at the beginning of the next sentence; because the three actors in this drama of crime are distinctly to

be set before us, each name beginning a clause : Oppianicus being *ipse*, 'totius negotii conditor.' [Mr. Roby reads **appellat. Ipse . . . discedit**, as Ry., etc.] 14. **Asuvius autem** *ab eo* **[brevi illo tempore] quasi in hortulos [iret]**, Kays.: Halm had conjectured **Asuvius autem ab Avillio eo tempore** ; and Mommsen had bracketed *brevi . . . tempore* and *iret*. All this is unnecessary. Madv. *Advers.* iii. p. 128 notes : 'cum Halmius oblitus esset *brevi illo tempore* dici ad eandem formam atque *paucis illis diebus* coniecturam inutilem posuit : quid Kayserus? Tria illa verba delevit : tanta est levitas.' Müll. conj. **iretur**.

38.—17. **iis** : **his**, STF. Cp. § 22 n. 18. **forum**, ST. 23. **Manlii**, ST ; **Manli**, P ; **Manilii**, FM. At **constituunt** P breaks off.

39.—28. **ex**, ST ; **sed ex**, R. **Page 15**, l. 1. **tum** : **cum**, ST. 2. **rem** : **tum**, ST ; **[tum] rem**, Kays. It is better, as Baiter suggests, to omit both. Cp. *Verr.* ii. § 79, qui cum reo transigat, for the absolute use of transigo : also § 40 *infra*. **et tam manifestam** : ST and an inferior MS. alone give **tam**. **reliquit**, ST. 5. **in quo alligatum**, ST ; **in quo inter allegatos**, FM, for which Turnebus conjectured **alligatos**. The reading in this passage has been hotly disputed by generations of scholars. (1) **inter allegatos**, though undoubtedly false, has the support of Ramsay. It has been explained ; (*a*) by Manutius as = *nocentes*, 'those whose names were brought forward (by Avillius as informer).' But this use of the word is post-Augustan, as Ry. points out ; (*b*) by Sylvius as = *adhibitos*, 'called in' to murder Asuvius. Orelli's explanation is similar : 'eos qui ad Avillium de occidendo Asuvio ab Oppianico adornati sunt' : in fact 'the agents of Oppianicus.' He connects *inter allegatos* with *primum Opp. nomen*, 'first among his own agents,' a construction like *primus inter pares* ; (*c*) Gronovius (ad Liv. xxxvi. 11) brings out the force of *allegatos* better ; *allego* being to 'depute a person or persons to treat with another person as *internuntius*' : he states that *allegati* is a legal term for 'persons employed to take down a deposition,' who thereby are themselves constituted *testes*. (This he admits is not certain : his authority, *Isid.* v. 23, has *alligati*.) He connects *inter allegatos* with *constabat*. (2) **inter alligatos** : 'criminis obnoxios,' 'culpae adfines,' according to Turnebus. 'Among those implicated in the crime.' This meaning can be amply illustrated (v. Glossary). But as Class. says, 'participium *alligati*, quum non constet, quinam sint isti homines, abrupte nimis positum videtur.' Hence (3) **alligatum**, the reading of ST, Bait., Kays., Kl., Müll., is the best, as being the clearest. 'Implicated'—testimonio obstrictum et convictum, Class. [same variant in F, § 151].

XIV. 40.—11. **per quem interfecerat plurimos** : these words have generally been regarded as a gloss. Lamb. and Schütz actually expunged them. All MSS. have them. 12. **curari velle**, ST ; **velle curari**, R ; **omnes suos**, ST ; **suos omnes**, R. 14. **foranum**, ST ; **circumforanum**, FM. Kays. brackets : but it is almost essential for the understanding of l. 17, cui fora multa restarent. 15. **duobus milibus HS** is probably

to be read; STF and a number of inferior MSS. give **duo milia**, M gives ∞∞ (*i.e.* CIƆCIƆ), which was perhaps the original form. **HS quadringentis**, R, and older ed. 16. **ipsius tabulis est**, ST; **est ipsius tabulis tum**, F; **ipsius tabulis tum est**, M, followed by Lamb., Or., Class., Ry., Kays. But, as Garatoni says, the particle *tum* has already occurred twice in this period, referring to the time of the act of poisoning. To denote the time of the trial of Opp. we want either *postea* or nothing. 17. **cum**, ST; **qui**, R, Class., Müll., Ry.

41.—23. **possit**, ST; cp. n. on § 33, l. 3. Possibly right. 26. **similem sui eum**, ST; **eum similem sui**, R.; cp. ll. 16, 29, § 42, l. 4. **Illum tabulas . . . liberis suis scripsit**, Quintilian ix. 3. 38, giving violasse (al. violari, in which we can trace the true reading) for **Larini**, doubtless a copyist's error. 29. **nemo iam**, ST; **iam nemo**, R. (Quint. omits **iam**). We are often indebted to ST. for the true order of the words. Cp. n. on § 13. It will not be necessary always to annotate the variation in the MS. reading. 32. **auditu**, T, which would destroy the climax (Ry.): *aditu*, 'no one would visit him at his house': *congressione*, 'no one would meet him by appointment': *sermone*, 'no one would converse with him.' Cp. *Sest.* § 111. 33. **iudicavit**, ST; **iudicabat**, R.

42.—Page 16, l. 4. **suo salvo capite**, ST; **salvo capite suo**, R. 5. **erat** before **sed** (the second) omitted by T pr. m. F W, and so Ernesti, Schütz, Or. But, as Class. says, gravitatem orationis certe auget. Pluygers would omit both this and the succeeding (the third) **erat**. 6. **at mater**, ST; **attamen mater**, R. 9. **ei**, S, om. T, pr. m.; **illi**, FM.

43.—14. **illi**, ST b (corr.); **illum**, R. The antithesis requires the dative: contrast § 62, l. 30; § 70, l. 12, where the accus. is used.

XV.—17. **ei deo**: **ideo**, S; **adeo**, T. 19. **Venerii**, M; **Veneri**, ST; doubtless a contraction of Venerii, and not a dative (=in potestate Veneris) as Class. says; **Venerei**, most other codd. 26. **se**, om. T. I have bracketed it for reasons given in explan. n. on § 36, l. 1. **non suis**, ST; **non solum suis**, F; **non suis solum**, M, Ry., Class.; v. explan. n. 27. **necessariorum**, om. T. 28. **tantae**: **antea**, ST.

44.—Page 17, l. 1. **removeri**, ST; **demovere**, FM, Or., Ry.; **dimovere**, some inferior codd. and some edd. Klotz reads **demoveri**. 2. **avarissimi**, S, pr. m.; **avarissimi atque audacissimi**, R; Bait. brackets, Kays. omits the last two words, which are an evident interpolation by some scribe to whom no description of Opp. seemed complete without the epithet *audax*, which he bears so constantly, but which here only weakens the argument contained in *avarissimi*.

§ 45.—5. **neque**, ST and two inferior codd., and so Kays.; **neque enim**, R, Class., Ry.; *quenquam quicquam eiusmodi matri poterat in animum inducere*, Arusianus Messius, p. 235, ed. Lindem. Hence Baiter reads **neque [enim] legare quicquam eius modi matri poterat animum inducere**; Klotz, **neque enim l. q. e. m. m. poterat in animum in-**

ducere; Müller, **neque [enim] legare q. e. m. m. poterat** [**in**] **animum inducere**. But **quicquam** has no MS. support, and **in** only that of some inferior MSS.

XVI. 46.—14. **Aletrinati**, Priscian (vii. 14. 70); **Larinati**, ST; **Aletrinate**, FM. In § 49 three codd. Lagomarsiniani read **a Larinatibus**. Throughout Halm prefers the form **Alatrinates**, which I adopt from him. 19. **Iam**: Madv. conjectures **nam**. 'Confirmatur enim quod praecedit, non praeparatur novae rei commemoratio; cp. § 57, altero loco correxit Pluygersius,' *Advers.* iii. p. 128. But in both these cases, as in § 67 also, **iam** introduces a new presentation of a fact already stated. It is enforced by a neuter pronoun. So in § 87, § 109, *q.v.* 22. **iis**, ST; **his**, FM. 24. **studiose**, STF and others; **studio**, M, codd. Pall., cod. S. Vict., cod. Dresd., Franc. secund.: a variant easily accounted for.

47.—29. **non ignobili**, ST and another; Kays., Kl., Müll.; **ignobili**, R., Ry., Bait. 31. **et**, ST, cod. S. Vict.; **sed**, R; Ry. insists that *non incallidus* is an expression of reproach, the qualification of which must be introduced by *sed.* Even granting the former point, the latter does not follow. Cicero often uses the conjunctive particles (*et*, *-que*, *ac*) to *explain*, where we use a disjunctive particle 'but' to *oppose*: *Sull.* § 21, in quo ego imperavi nihil, *et* contra . . . parui; *de Off.* i. § 22, non nobis solum nati sumus ortus*que* nostri partem patria vindicat. **Page 18**, l. 1. **collocutus**, ST; **locutus**, R. **Bebio**, ST; **Baebrio**, most other codd. In § 53 M gives **Baevius**; two codd. Lagomarsiniani **Baebius**, which Gar. adopts; cp. in *Pis.* § 88. 3. **qua diligentia**, S b (corr.), codd. Lambini, Baiter, Kays., Klotz; **quanta diligentia**, T; **qua dignitate**, R; adopted by Ry., who explains it as meaning 'Baebius was a man of high standing, whose advice might therefore be safely followed.' 6. **multa**, ST, Lamb.; **multis**, R, Ry. 7. **comparatur**, ST; om. FM. 8. **pecunia**, ST; **pecuniaque**, R. **ob**, STFM; **ad**, many inferior codd. 6-9. Ramsay reads: Ne multis; Diogenes emitur; venenum diebus paucis (multi viri boni quum ex occulto intervenissent) pecuniaque obsignata, quae ad eam rem dabatur, in manibus Scamandri, liberti Fabriciorum, deprehenditur. So Or. Bait., Kays., Kl., Müll. follow ST.

We must compare § 49, cuius in manibus venenum deprehenderat; § 53, Scamandrum cum veneno pecuniaque deprehensum. If we are to make a consistent story out of these passages, we must suppose (in spite of Classen) that *both* the poison and the purchase-money were found upon Scamander. [V. explan. n. for force of *dabatur.*] As Ry. says, the money without the poison would have been no proof of guilt; and (§§ 50, 56) the *deprehensio veneni* was the grand charge against Scamander. Cicero may mean that Scamander had received the poison from Diogenes, and was on the point of paying for it when the witnesses rushed on him.

Ry.'s reading no doubt is the clearest statement of the circumstances. But we have no right to insist on so clear a statement in face of the MSS. If the statement in the true reading is confused, it is either because Cic. feels

it unnecessary to be precise in every mention of the story, or more likely because he has his reasons for vague language, such as 'venenum diebus paucis comparatur' (which does not tell us how the poison was bestowed). As Mr. Peterson observes, there is another unexplained point: Diogenes had been solicited to administer the drug himself to Cluentius; why was he selling it to Scamander?

48.—11. **esse diceret**, T; **dicit esse**, FM.

XVII.—16. **manifesteque**, ST; **manifestoque**, R; cp. §§ 40, 43, however: the form in **-e** is not found elsewhere in Cic.

49.—22. **venerit**, ST. 26. **unum**, all good MSS.; but Lamb. and Or. read **verum** on the poorest authority. **tum**: **cum**, S; **cum causa**, T; the error is due to iudicium causa in the line above. 27. **idem** (or **idem illud**) *imp. per.* conj. Lehmann, *Herm.* 1880, p. 571. 32. **possint**, ST. Possibly right.

50.—Page 19. l. 6. **eis**, om. ST; **his**, many MSS. Kays. suggests the omission of **arbitrabantur.**

XVIII.—8. **P** om. ST; **Cannutius**, STM; **Canitius**, F; others **Canutius.** 9. **quidem**, om. T and others; but then **ille** is left without any force. V. explan. n. for meaning of *quidem.* 10. Pluygers brackets **venenum esse deprehensum**, without reason. The insertion of **sed** before omnia would make the drift of the sentence much clearer. 11. **constituebantur**, ST; evidently wrong.

51.—20. All MSS. but ST have a gloss after possim, **implere.** **imprudentiae,** ST wrongly, and below (l. 24), **imprudentissimus.** Cp. § 76, l. 29, n.

XIX.—26. **laudari**, ST wrongly. Pluygers conjectures **etiam . . . defuisse** for **etiam si . . . defuissem**, following Orelli. But v. explan. n., which justifies the irregularity of construction.

52.—32. **quicquid**: v. explan. n. Perhaps with Bait., Kays., and one or two earlier edd., we should read **quicque.** In *de Fin.* ii. § 5, *quicque* is confused with *quicquid* by two codd.: so in *Verr.* ii. 4. 31, 132, ubi quicquid; unumquicquid are found in inferior codd. But it cannot be always put down to the carelessness of copyists. Its existence in Lucr. is undoubted: auct. *ad Herenn.* ii. § 47, gives *quidquid* (quicquid) for *quicque* in all MSS. but one. It was in all probability a common colloquial error in Cic.'s time. (Cp. Madv. *de Fin.* v. § 24.) Page 20, l. 1. After **Habito** Kays. inserts **fuissent.** 6. **fuisse**, ST; **esse**, R. Edd. from Classen follow ST. The sense demands it: 'would have come if the plot had succeeded,' not 'were about to come': 'nam Cannutius in accusatione Scamandri ea tantum, quae perfecto nefario consilio facta forent, commemorare potuit: et *in ipsa repetitione verborum*, quae modo ad excusandum prolata erat, *ludibrium quoddam inest.*' 9. **sed quaerebat . . . patronus**, om. ST.

53.—11. **insidias factas**, ST; **factas insidias**, R; cp. n. on. on § 41, l. 20. 13. **quovis**, T; **usus venire**, ST; **posset**, STF. 17. **Dio-**

genen, ST (so S in l. 11). 21. **se cum Cleophanto**, ST. **collocutum**, S; **locutum**, R; cp. § 47.

54.—24. **tota acc.**, ST; **et tota**, R. The antithesis is between *verbo* on the one side, *re vera et periculo* on the other; *tota accusatione* applies to both members. 31. **et**, ST; **ac**, R.

XX. 55.—32. **consilium illum viri**, S; **oportet**, T; **Q. Iunius**, ST. **Page 21**, l. 8. Mommsen brackets **id**, comparing § 62. But § 105 supports the MSS. 9. **Quae horum porro**, ST.

56.—23. **ipse eis**: **iis** alone, T; **ipsis iis**, Weiske.

57.—27. Lamb., Or., Class., Ry. write **Cepasios**.

XXI.—31. **Iam**: Madv. conj. **nam** (and so Pluygers) on same ground as in the similar passage § 46, l. 19, where v. n. **hoc prope**, STFM: **hoc quoque prope**, one Lagomars. cod., which Or. and Ry. retain, bracketing **quoque**. 'It is quite out of place here. Nothing had been previously mentioned in which the arrangements of Nature could be arraigned as unfair,' Ry. **Page 22**, l. 2. **nisi forte . . . debent**, ST b (corr.), also margin of cod. S. Vict., Lamb., Class., Bait., Kays., Kl., Müll.; om. FM, Graevius, Or., Ry. The words, far from being a frigid interpolation, are indispensable, as rounding off the previous sentence. Cicero has started an ironical cavil at the dispensations of Nature: 'It is very hard that, whereas in bodily diseases the more serious the complaint the more competent is the physician called in, in trials, where a man's civil existence is in jeopardy, the more serious the indictment the more incompetent is the advocate retained.' So far there is nothing to show that Cicero is not in earnest; but the opening words of the following clause (*nisi forte*), with their tentative solution of the difficulty (which involves its real explanation), make it impossible to mistake the banter of the passage, which is aimed of course at the unfortunate Caepasius—'but perhaps the reason is that doctors have only to supply skill, advocates both skill and moral support (and the latter only a low-class advocate will give to a shady case).' [Nam quod ea causa, quae unice vera est, et magnum discrimen, quod inter medicos et patronos intercedit, cum specie dubitationis profertur (*nisi forte*), hoc egregie fictae praecedentium gravitati convenit. Similem sententiarum nexum habet, *pro Caec.* c. i. 2; *mihi quidem quum audax praecipue fuisse videtur Aebutius, tum impudens in iudicio . . . : nisi forte hoc rationis habuit, quoniam, seq.* Class.]

58.—4. **agitur causa**, om. S; T inserts between **paucis** and **verbis**; Bait., Müll. bracket; Kays. omits. 8. **non intellegebant**, conj. Pluygers, punctuating with commas at **Oppianicus** and **Fabricius** (l. 8). 11. **ut . . . videretur**, ST, Class. Ry.; **hoc . . . videbatur**, R, Lamb., Or. The latter reading is absurd: it could only mean, 'though he did *this* (that is, stabbed his client's reputation) to the best of his power': but Cic. could not have attributed to Caepasius a deliberate design to damage his own case. Nor can *sedulo* mean 'in good faith'; if it could, we might get a fair sense from the reading of R.

That reading, however, can be accounted for: some copyist, unfamiliar with the absolute use of *sedulo facere*, introduced *hoc* as object. Class. illustrates the usage by quotation: Ter. *Eun.* ii. 3. 71, faciam sedulo, dabo operam, adiutabo. A sentence in *Rosc. Am.* § 59 (in context which has other points of contact with the present passage) is very similarly constructed, and supports the reading in the text: postea quam invenit neminem eorum . . . ita neglegens esse coepit, ut . . . resideret, deinde spatiaretur, nonnunquam etiam puerum vocaret . . ., prorsus *ut* vestro consessu . . . pro summa solitudine *abuteretur*. 13. **accusationi**, ST, all the Oxford codd., according to Class., and all the Palatine codd. **accusatori**, cod. Franc., followed by Lamb., who explains 'praevaricando accusatori inservire'; **defensioni**, some of Lambinus' codd., who explains 'praevaricando, *i.e.* mala defendendo, defensionem prodere.' He adds: omnino haec varietas suspicionem mihi commovet, has voces esse adventicias. *Praevaricari* is not construed elsewhere in Cic. with the dat. On these grounds, Bait., Kays., Müll., adopting **accusationi**, bracket it. **itaque cum . . . discesserat**, *Quint.* vi. 3. 40. 15. **respicite iudices . . . discesserat**, Rufinianus, *de Fig. Sent.* § 4. **respicite iudices hominum fortunas**, om. ST and Quint. 16. **respicite dubios variosque casus**, om. Quint. and Rufin.

59.—24. **ita**, ST, cod. S. Vict. b (corr.); **iam**, R. Gruter says the latter is *longe vividius*. But *iam tum* would mean 'thereupon' or 'next,' whereas his verdict upon himself did not *then follow*, but was already recorded: only the legal verdict followed.

XXII.—27. **persona causaque**, ST, cod. S. Vict.; **causa**, R; *causa* nihil aliud spectat quam tentatum ab Oppianico in Cluentium veneficium: *persona* ea omnia complectitur, quae de vita Oppianici ante acta praemissa erant, *Class.* 29. **his**, STFM; **is**, some MSS.; **isdem**, T; **iisdem**, S and others. 32. **et** before **eis** omitted by F and a number of inferior MSS.; Gar. also condemns it, and Lamb. omits. But it answers to **et** following: the *crimina gravissima* are divided into two classes, the mentioned and the unmentioned. 33. **nunc**, om. T; S has **nunc ego omnia**; Bait., Kays., Müll. bracket. Page 23, l. 1. **Oppianici**: Pluygers would bracket.

60.—**C. Fabricium**, ST; **Fabricium**, FM. 7. **consentire**, preserved by ST; the rest have **consistere** or **constare**. **per se**: Lamb., Bait., Kays. bracket: found in all MSS. 9. **et ii**, ST; **et hi**, F; **et illi**, M. 11. **conscius esset**, ST; so Class., but no other ed. A meaning might be extracted from it by comparing § 56, quem conscium fuisse *arbitrabatur*: the subj. might mean 'because he was *supposed* to be implicated'—a merely suspected connection with the crime was enough to condemn. But this does not square with the facts.

61.—18. **si qui**, STM and others; **si quis**, F. 20. **voluisset**: Madv. (*Advers. Crit.* vii. c. ii.) has an ingenious emendation, which I have hesitated to adopt in the face of the MSS., which grammatical considerations are not sufficient here to override (v. explan. n.): 'Ut

recta oratione interrogatur, sic recta non obliqua (**quod . . . voluisset**), responderi debet, et in proximis respondetur (*nihil: sed . . . erat* et *quia . . . probabatur*). Itaque scripsit Cicero: "**Nempe, quod . . . voluit. Ecquid Habiti**, cet." Iam Gulielmus "**voluit sed quid . . .**"' 22. **et**, ST and two others; R omits.

62.—32. **accusatoris esse causam**, ST; **accusatori causam esse**, R.

XXIII.—**Page 24**, l. 1. **de**, S; **abs**, R. The former is the rarer construction with *quaero*, but is not unexampled: v. *Pis.* § 18, also *infra*, § 182. 8. **Acci**, S and cod. Francii; **Atti**, TFM, which form P has in § 147; **Acti**, some inferior codd. The same variation appears in the spelling of the name of Accius the tragedian. Teuffel (*Rom. Lit.* § 119. 1) says that the forms are equally well attested: the form with *tt* gained the ascendency in the Imperial period. (V. Prof. Wilkins on Hor. *Epist.* ii. 1. 56.) From the *Brutus*, § 271, we know that this T. Accius was of Pisaurum: and an inscription, belonging to Pisaurum, is extant, with the words T. ACCII PISAVR. CINERES. 4. **in**, ST b (corr.); om. R. 5. **age si nocentes: aies innocentis**, ST. 9. **Fabricium**, ST; **Fabricios**, R. Cic. generally uses the plural: here, however, he chooses to be precise; cp. explan. n. on § 59. **inquam**, ST and a cod. of Sylvius; **unquam**, R; Class. and Bait. say that *inquam* is read by ST *alone*. 10. **exstant memoriae**, FM and many inferior MSS. The use of *memoriae* for 'memoirs' (classical *commentarii*) is not Ciceronian. The first examples come from Aul. Gell. and Suet. (v. Lewis and Short). 12. **illorum iudiciis**; Ravius, Var. lect. ad Cic. *Orr.* ii. 83, taking *illorum* to refer to *testium*, emends **indiciis**. The fact that *male dicta* could not form part of evidence given is enough to condemn this. 13. **locum**, ST. Cp. explan. n.

63.—15. **etsi**, ST; **si**, R. 19. **iudicium corruptum esse**, ST; **iudicium esse corruptum**, R; and *Quint.* ix. 2. 51. 24. **illum: ille**, ST. 25. **non**, ST, Kays., Müll., Class.; **nemini**, R, Bait., Ry., Kl. 26. **alia ratione**, all MSS. but three; **aliqua**, R, and so most older edd. The latter reading might mean (*a*) 'was in *some* respects doubtful,' (*b*) 'in *some other* respects' (*alia qua*), as in Verg. *A.* ii. 48, aut aliquis latet error. Neither meaning suits. With the former, *aliqua r. d.* might be used of an innocent man on his trial; as to the latter, we want *alia quacunque*, not *alia qua* (aliqua). Cp. § 64, l. 6. 28. **eis**, om. ST; **bis causam iis**, R. Bait. reads **bis iis causam**; Kays. **bis causam eis**.

64.—29. **Unum quidem . . . purgo Habitum**, *Quint.* v. 10. 68; **unum quidem** (om. certe) **nemo . . . Cluentio**, Rufinianus, *de Fig. Sent.* § 13. 30. **inimicus**, ST, cod. S. Vict. and others, best MSS. of Quint. *l.c.* Rufin.; **iniquus**, R. The latter is easier; but personal hostility induces *unfairness*. 31. **iudicium esse**, ST; **esse iudicium**, R, Quint.

Page 25, l. 1. **iudicii**, om. all but ST b (corr.).

XXIV. 8. **habes**, ST.

65.—10. **Staieno** in ST henceforward. Cp. n. on § 20, l. 3. 14. **negate**, ST, Class., Bait., Kays.; **negate negate**, R, and so Ry.; 'Ad fulciendam eiusdem verbi repetitionem, apponi solet *inquam*,' Class., quoting § 62, nihil nihil inquam; *Flacc.* § 3, hoc tempore hoc inquam tempore, and other exx. We may add *Cluent.* § 12, mater . . . mater inquam appellabitur; § 125, dum vero eum fuisse Oppianicum constabit . . . dum haec inquam constabunt, § 168. But there are also cases in which the same *idea* repeated in a slightly different form is introduced by *inquam*: e.g. *Verr.* ii. 4. 7, haec omnia . . . abstulit: nullum, inquam, horum reliquit. So here *audete negare* is taken up by *negate.* 16. **meo**, STF and others, Bait., Kays., Klotz; **in eo**, R, Class., and Ry. We must compare *Rosc. Am.* § 73, ita quaero abs te, C. Eruci, quo modo, et sic tecum agam, ut in eo loco (so all the MSS., Madv. corr. meo loco) vel respondendi vel interpellandi tibi potestatem faciam, vel etiam, si quid voles, interrogandi. *In eo loco* would mean (as Manutius says) 'in subselliis accusatorum': contrast hoc ipso in loco, § 54, *i.e.* 'in subselliis reorum,' and compare § 168, *ex illo loco.* We should certainly expect here and in *Rosc. Am.* l.c. *illo*, not *eo* (Lambinus conj. *isto*). It is therefore better, with the best MSS. and Madvig (*Opusc. Acad.* i. p. 122), who quotes the present passage, to adopt the reading *meo.* The change in the MSS. from MEO to INEO would be a very slight one. **an**, ST; **at**, R. 19. **datam post iudicium**, om. ST.

66.—24. **ut item**, ST; **item**, R. 25. **quod**: **quo**, ST, an error. 30. **se**, STF; om. M, Class., Ry. 31. **donis datis muneribusque**: so all MSS., but ST, which read **datis muneribus**, and are followed by Class., Ry., Bait., Kays.; Müll. brackets **donis** and **-que**. Class. supposes that the former reading is due to the mistake of a scribe who, taking *datis* for a subst., glossed it with *donis*. But there are limits to the stupidity of scribes, though not, perhaps, to that of the editors who punctuated thus—*donis*, *datis*, *muneribusque*, because Cicero should otherwise have written *donis muneribusque datis*. It is more likely that a scribe, unfamiliar with the phrase *dona et munera*, corrected to *datis muneribus*: *muneribus* alone would have been better, or *donis muneribusque*; cp. § 190, accusatorem . . . donis muneribusque . . . obstrinxit. Dona et munera, donum munus, were legal phrases: *e.g.* there was a law of L. Cincius *de donis et muneribus* (*de Orat.* ii. § 286). Ulpian distinguishes *donum* from *munus*, as genus from species. 32. **fautore**, ST b (corr.), cod. S. Vict.; **auctore**, R. The latter is explained as *defensor*: Staienus, who should have acted as *iudex*, acted as *patronus*, acted partially. But this will scarcely hold.

67.—33. **erat**, ST; **esset**, R. **Page 26**, l. 1. **sententia absolutus**: these words are probably an interpolation. Gar. did not find them in his MS.; Kays. brackets. **absolutus . . . sententia**, om. M.

XXV.—8. **non**, omitted by all good MSS. except ST (and a Palatine MS., according to Gruter). Graevius says that both MSS. Francii omit it, and

the cod. S. Vict., the latter and one of the former inserting a note of interrogation at the end of the sentence. He would therefore read **iam hoc ignoratis . . .?** But cp. § 46, iam hoc fere scitis omnes: the interrogative form is too impassioned. (Pluygers reads **nam** for **iam.**) 9. **monitae,** ST b (corr.), cod. S. Vict. marg. (and Ammian. Marcell. xiv. 2, in a quotation); **dominante,** R; whence Lamb. conj. **domitae,** Gesner **domante. sunt aliquando,** S; **sint aliquando,** T; **aliquando sint,** R.

68.—10. **cum**: all MSS. but two have **quam**: the same confusion in §§ 72, 181, 192. 16. **esse,** STFM; om. many codd. 20. **autem,** ST b (corr.); om. R.

69.—24. **possit,** all MSS. but one Oxford cod., which reads **posset,** which edd., except Class. and Ry., adopt. But the vivid construction, which retains the *ipsissima verba* of Staienus, is appropriate here: as in § 33, ll. 3, 4, § 134, l. 9, § 179, l. 5, ubi v. crit. nn. V. also explan. n. on this passage. 28. **potuit,** ST; **potuit et,** R. **HS sexcenta quadraginta,** T; **HS xxxx,** S; **sexcenta quadraginta milia,** F; **sestertia quadraginta milia,** M. 30. Müll. conj. **huius modi**: so in § 179.

70.—Page 27, l. 2. **vera,** ST; **vere,** R. 5. **aut,** ST; **et,** R.

XXVI.—7. **cum esset egens . . . mentem suam coepit,** Julius Severianus, p. 339, ed. Capp. 8. **miserrimus in locis et inanissimis,** T and others; **miserrimis in locis et inanissimis,** SFM, cod. S. Vict., six Pall. codd., adopted by Bait., Kl., Müll., Ry.; **miserrimus et inanissimus,** Severianus and some MSS., read in older edd., and retained by Graevius, *inanissimus* being explained as pauperrimus, 'vacuus viator,' Juv. x. 22, being compared. Class. objects to each of the latter readings, saying that *miserrimis* as an epithet does not suit *locis*, nor *inanissimus* Staienus: he fixes the error at *et*, and writes **miserrimus in locis [et] inanissimis,** for *et* would naturally be inserted when *miserrimus* was changed to *-is*. (But how is the reading of T to be accounted for in that case?) Class. however offers a conjecture: **miserrimus in locis exinanitissimis** (this word occurs *Verr.* ii. 5. 104, *leg. agr.* ii. § 72). Ernesti conjectures **loculis,** and Kays., adopting it, conjectures and writes, **miserrimus in loculis ante inanissimis.** This is a somewhat violent remedy. [Yet it retains *miserrimus*, which is well authenticated, and rids us of the dubious plural *locis*, as to which v. explan. n. If we were to read *miserrimus olim loculis inanissimis*, it would be easy to deduce the variants from this original, and *miserrimus* would have its necessary qualification in point of *time*—'*once* so wretched.'] It is no doubt strange that the reading of S, so simple, should have been thus perverted in the MSS.; the termination of the adj. *miserrimis* was perhaps confused with the nom. terminations of the adjectives preceding: perhaps also the apposition of *m. in locis* to *domi suae* was misunderstood by the scribe. The further progress of corruption is clear: *miserrimis* becoming *miserrimus*, 'then *inanissimis* was altered to agree with it, and finally *in locis* was left out to make sense of the corrupted words,' Ry. (For the

epithet *miserrimis*, cp. *Phil.* ii. § 104, o tecta ipsa misera quam dispari domino.) 10. **ego dem**, T b (corr.); **eo ego dem** (with **eo** erased), S; **deme**, R. Julius Rufin. *de Fig. Sent.* § 20, quotes thus—dem iudicibus? mihi igitur nihil quaeretur? 12. **Oppianicum**, ST; **Oppianico**, R. Contrast § 43, l. 14 n. Gar. would read *-um* 'etiam contra libros.' 13. **quid**, ST; **qui**, R and older edd. **non fieri**, ST; **fieri non**, R. Madv. has restored the true punctuation: Lamb., Or., Class., Ry. have **qui** (Class., Ry. **quid**) **tandem? nihil enim est, quod f. n. possit. Si quis . . .** 14. **reddundum**: for the true spelling here we are indebted to ST, as in § 69, l. 33, to T.

71.—16. **consilii**, ST, Lamb., Class., Bait., Kays.; **consilium**, R. followed by Ramsay, who, 'as it is a matter of indifference which reading we select,' prefers that 'supported by the greatest number of witnesses.' But what if the witnesses are not independent of each other? We get what Bacon calls 'sequacitatem potius et coitionem, quam consensum.' Just below (end of § 73) we have *hoc testimonii.* Even in good MSS. (according to Madv. *de Fin.* ii. § 84), the gen. in *-i* from the stem *-io-* is sometimes mistaken for an accus. with the *-um* wanting, and is falsely corrected accordingly. 25. **quo**: **quod**, ST; cp. § 66 n. 28. **Guttam . . . Bulbo**, Arus. Messius, p. 263, ed. Lindem.

72.—29. **avarus**, ST. **iis . . . degustarant**, ST, and edd. since Or.; **is . . . degustarat** (which means nothing here), R, Lamb., Or., and most older edd. *Is* is a common contraction in MSS. for *eis*: *-ant* is written *-āt*; the stroke over the *a* being lost, the variant results. 30. **speculae**, ST; **spegulae**, R. 32. **hilaro**, ST; **hilari**, R; cp. § 25, l. 19, *inermum* (v. l. inermem), cp. n. *ibid.*; Ry. says *hilaro* is probably right, and reads *hilari.* **placidissime**, ST, Bait., Class., Müll.; **blandissime**, R and other edd. The former would merely repeat *hilaro voltu*—'revera iratus placidum vultum simulabat Bulbus,' Class. *Blandissime* expresses the coaxing tone of voice in which B. spoke. Page 28, l. 1. **aliorum**, ST. 2. **magis quam**, ST; **magis suae quam**, R. No difference is made in the *sense* by the insertion of *suae*: it could not well imply sarcastically (as Ry. suggests) that Staienus was really a Ligurian, much less is it *bound* to imply this seriously, as older editors thought. It is in fact superfluous. In *Sest.* § 69 (quoted in explan. n.) we have *eius* (which may be the true reading here), falsely corrected to *suae* by some copyists, and omitted after *magis* by others). 3. **quaesivit** for **quaerunt**, ST. 4. **planius**, ST, and two MSS. Lagom.; **plane**, F.; **planus** in some old edd.; A. Gellius, xvi. 7. 10, says that it occurs in the *pro Cluentio*. 6. **spe**, om. T. 10. **condidisset**, ST; **condivisset**, R, and edd. **Condisset** is Baiter's conjecture. 11. **sese ab Opp. destitutum**, condemned by Madv. (Append. *ad Disp. de Ascon.* p. 51 *seq.*); Kays. brackets, and also suspects **pulchre adseverat** and **atque**; but surely the former is too good for an interpolator. 12. **cum**, STFM; **quam**, some inferior MSS., Lamb., Or. Cp. § 68, n.

XXVII. 73.—20. **pronuntiari**, cod. S. Vict., Palatine codd. 2 and 6, Francian cod. (1st) of Graevius; **pronuntiare**, R (and Wramp.'s MSS.). In the older edd. the passage appears with various interpolations: *e.g.* Lamb. reads 'placuit repente iudices pronuntiare. Iudices se id velle dixerunt': this has no support in MSS. now extant. Classen restored the true reading. The scribes had not understood the force of DIXERUNT, for which v. explan. n. DIXERE, Garatoni from *Quint.* i. 5. 43.

74.—24. **Quadragena milia nummum**: so most MSS. and edd., with trifling variety in the mode of notation: M has **DCLX quadragena millia nummum.** 40,000 was written CIƆXL, and this was altered into ICCLX (660), or (as some edd. read) IƆCXL (640). 28. **quod**: **quodam**, ST. 30. . . . **tiebatur facile** . . . down to **aliis nonnullis sus** . . . is in P. 31. **Quintius**, always PS. 33. **illo**, P; **Aelio**, T; **Staieno** (variously written), R.

75.—Page 29, l. 6, **possit quod cuique deberet**, ST. For **possit** cp. crit. n. on § 33, l. 3. **ut qui . . . reo venerant**, *Quint.* v. 11. 22. 11. **exspectabant**, PST; **spectabant**, M; **sperabant**, F. **esse putant**, P, according to Class.; **putabant**, R.

XXVIII. 14. **sortitio fuit ut**, ST.

76.—19. **factum**, ST. 20. **et**, P; om. R. 24. **qui**, PST; om. R, Lamb., breaking the sentence at *oportere*, and reading **et, si.** The clause *qui* . . . *oportere* contains the reason for their decision, and being taken up again in *tamen nihilo minus*, must be a member of the same sentence. Madv. (*Adv.* iii. p. 128) emends **statuerent**, 'causali significatione, apte ad Imperfecta primariae sententiae.' But the perf. indic. expressing the *simple fact*, answers to *absolverunt* below, which is well supported. 26. Ernesti conj. **iudicarent** or **iudicassent.** 29. **impudentia**, ST b. (corr.). 30. **abducti**, T, cod. S. Vict. **absolverunt**, PST and others; **absolverent**, R.

77.—Page 30, l. 1. **possit**, ST, n. on § 33, l. 3. 5. **clamabat**, P; **clamitabat**, R. So in § 108, *agente* (al. *agitante*). **iudicia esse**, ST. 8. **et hominem pudentissimum**, om. T; **prudentissimum**, M; cf. n. on § 76, l. 29. 9. **esse**, om. all but P.

78.—13. **accersitus**, STM and others. 15. **eum sermonem audierint omnem**, P; **eorum serm. omnem aud.**, R. 16. **prope**, cod. S. Vict., Lamb. 17. **Staieno**, P; **a St.**, R. But *leg. agr.* ii. § 19 has the plain dative: eripere vobis atque e manibus extorquere.

XXIX.—20. **ab**, om. ST: such a construction would be unexampled. 24. **condemnatum . . . sententia**, om. ST. **audiebant**, PM; **esse audiebant**, F.

79.—Page 31, l. 1. **praeditus** inserted after **potestate** by all codd. but ST; Bait., Müll. bracket; Kays. om. 2. **illi iudicio invidiam**, ST, cod. S. Vict.; **illi invidiam**, FM; **habito illo iudicio invidiam**, cod. Lamb. **Illi** alone is explained as = *Cluentio*: but how could C. Junius fall into hanc (invidiae Cluentianae) flammam? 3. **recentem**, om. S, at the end

of a line. 4. Kayser brackets **qui illi quaestioni praefuerat**: but the explanation is quite natural here, as that in § 74, l. 32, is some way back. Pluygers (perhaps objecting to the construction, for which v. explan. n.) brackets **memini**. 7. **clamore**, ST; **clamore hominum**, R; the *hominum* is repeated from the preceding line.

80.—11. **quod in tempore . . . prosit**, *Quint.* ix. 3. 82. Also Curius, Fortunatianus, p. 92, ed. Capp. **obsit quin quod**, Quint. *l. c.* 14. For **at** all good MSS. have **ac**, which Klotz retains. 15. **non** before quod, om. STM.

XXX.—17. **agnoscite**, FM. 18. **audet**, ST; **id audet**, R.

81.—27. **Versatam . . . constat**, Jul. Rufin, *de Fig. Sent.* § 13. 28. **esse**, om. ST, cp. § 77, l. 9. **an a reo**, S; **an reo**, T. **dicit accusator**, ST; **accusator dicit**, R. 29. Mr. Davies suggests **ne pecunia quidem eripi** (*Hermath.* ii. 400). But v. explan. n. 32. **fuisset**, ST; **esset**, R. V. explan. n. 33. **ipsam**: **iam** (really a MS. abbreviation for *ipsam*), ST b (corr.). Class. argues for *iam*: saying that *ipsam* would mean 'the *mere* multitude,' etc., as if this were an insufficient terror. But *ipsam* means 'taken by itself,' 'without any accessory bribe from the accuser,' answering to '*ut nihil opus esset pecunia*,' l. 30, in the corresponding clause of the accuser's speech. **Page 32**, l. 1. **criminum et atrocitatem**, ST; **et atrocitatem criminum**, R. 4. **omnes . . . continerentur**, S.

82.—11. **ad**, ST; **nunc ad**, R; Garatoni saw that *nunc* of the vulgate was altogether pointless. 15. **iudicibus**, ST, Ry., Class.; **ducibus**, R, Bait., Kays., Müll. The latter reading, as Class. says, is tempting, because it preserves the metaphor; but in what sense can the *jurors* be said to track the '*profectio*' of the bribes? this is surely the work of the orator: *vobis iudicibus*, on the other hand, contrasts the equity and calmness of the present occasion with the 'invidia iudicii Iuniani.' So § 88, hodierno die primum veritas vocem contra invidiam *his iudicibus* freta misit. Prof. Nettleship has suggested **indicibus** (*Journ. Philol.* no. xvi. 1879), comparing *Verr.* ii. 1. 105, iste praetor . . . utrum admonitus an . . . qua est ipse sagacitate in his rebus, sine duce ullo, sine indice, pervenerit ad hanc improbitatem, nescio. This reading ingeniously reconciles the two variants. It is exposed to Classen's objection. But that objection is not fatal. Cic. is not speaking precisely: the jury, *as such*, could not be said to have spent eight years in sifting the charge against Cluentius, nor the counsel (as we should have to understand *nos*, cp. § 3, l. 22) to be now concerned to unearth the offender. Cic. is merely saying in general terms that the public (*nos*) looks to the jurors, as men who are qualified to lead opinion, to give the only verdict possible.

83.—21. **cur**, om. FM. 22. **qui**, Classen's emendation, which Bait., Kays., Klotz have adopted; **cui quod**, S; **quod**, T; **cui**, R. **si** conj. Müll. If any emendation be necessary (which is unlikely)

it must be more thorough-going than this. We might consider **Staienum iudicem** and **cum in consil. mittebant** glosses on **eum** and **cum in consil. iretur**, introduced into the text. This would leave us with the following version of the second half of the sentence : *cur qui* [*quam ?*] *pecuniam dederant non requirebant ?* In the text the change of mood after *cum* is remarkable. 22. **requirebantur**, FM ; **quaerebant**, S. Cp. § 183, n. (*ad fin.*). 23. **querebatur**, STM, cod. S. Vict. ; **quaerebat**, F ; **requirebat**, Pal. cod. i. 24. **effectum**, STF, cod. Lamb. ; **perfectum**, M. 25. **condemnationem**, ST, cod. Lamb. ; **damnationem**, FM. 27. **iudicii si istinc**, ST b (corr.) ; **iudicii istinc**, R. 29. **nulla suspicio**, ST ; **et nulla susp.**, R. 30. **patiamini**, T. The reading in the text has the support of cod. Lamb., cod. S. Vict., codd. Pall., besides all known MSS. except T (if Bait. is correct ; Class. notes, *all but ST*). V. explan. n.

XXXI. 84.—**Page 33**, l. 2. **conciliationis gratiam**, ST b (corr.). 10. Momms. conj. **sive ipse sive ut.** **istam dedit conciliationis et gratiae fabulam** (after **admonitus**), om. ST and one Pal. cod. Class. brackets it as a certain interpolation ; Bait. and Ry. bracket ; Kays. expunges, adding **est** instead ; Müll. reads it, omitting **et**. Classen's masterly note, which is too long for transcription here, should be consulted. The words are objectionable (*a*) as almost repeating the opening words of the sentence ; (*b*) as only varying them for the worse. The hendiadys *conciliationis et gratiae* is inopportune : so much so that Manutius expunged *et*, and Orelli bracketed it. The phrase *dare fabulam* should properly mean 'to put a farce upon the stage' : thus (as Ry. suggests) the words of § 86, *illud quod tum explosum atque eiectum est*, would be anticipated. But the sense requires *fingere fabulam*, 'to concoct a story.' The motive for the interpolation is to be found in the desire to relieve the phrase *admonitus excogitavit*, which is quite intelligible—'worked out the hint which he got from Cethegus.'

85.—12. **tum**, ST ; om. R. 17. **fuit** : **fuisset**, ST.

86.—22. **fuit**, om. ST. 26. **detulisse**, ST ; **rei tulisse**, M ; **re intulisse**, F. 27. **matre**, M, Pall. codd. vii., Bait., Kays., Kl., Müll., Garatoni ; **matre habebat simultates**, STF, which Class. and Ry. retain. Class. justifies the latter, as representing Sassia's enmity as an obstacle to the reconciliation of Cluent. with Opp., whereas the other reading puts a reconciliation with Sassia on the same footing as a reconciliation with Opp. But the *obstacles* to reconciliation clearly begin at *haerebat*, and are enumerated in independent clauses. [To the same effect writes Madv., Appendix ad *Disp. de Ascon.* p. 45 ; adding that had Cic. meant to represent Sassia's enmity as an insuperable obstacle, he must have used a stronger word, such as 'inimicitias gravissimas,' to describe it : 'simultates enim componi possunt.' The interpolation is due to a misunderstanding of the repetition of the particle *qui*.] 30. **Cluentius** : **Cluentius poterat**, ST.

XXXII. 87.—31. **ut** : **iis**, ST, from which Bait. reads **is** ; **ut**, R and all other editors. Comparing § 84, l. 2 (the former alternative, *an* here introducing the other), we see that a final particle is indispensable, to answer to *ad conciliationem gratiae*. **iam**, all good MSS. ; **nam**, Pantagathus, adopted by Bait., Kays., Kl., Müll. Cp. § 46, l. 19, n. Also *leg. agr.* ii. § 26, primum lege curiata decemviros ornat. Iam hoc inauditum et plane novum. 32. **quid** : **quod**, ST. Page 34, l. 4. **disputo**, ST ; **disputem**, R. The indic. is better, because the 'discussion' is begun already, not merely contemplated. 6. **rem fuerit**, STM (so Garatoni) ; **rem data fuerit**, F. The former is preferable on grounds of concinnity. 8. **milia**, ST ; **milia nummum**, R. Again ST are free from the accretions of inferior MSS. 12. **discribere** must be read in spite of the MSS. (**describere**), as always where the idea of division or allotment is present. So the MSS. often give *dirigo* for *derigo* (Munro on Lucr. vi. 823), *designo* for *dissigno* (Hor. *Epp.* i. 5. 16). V. L. and Sh. art. *describo*, Prof. Wilkins on *de Or.* i. § 58. Thus we cannot accept Ry.'s suggestion that there is a sort of pun on the word—to *distribute* and to *draw diagrams* : the first is *discribo*, the second would be *describo*.

88.—16. **ista res**, Bait., Kays. bracket, Gar. annotates 'Quid haec attinebat tam proxime iterare? parumne reguntur omnia ab ante positis *ista ipsa res*? vix igitur puto a Tullio esse.' 19. **ista multa**, ST ; **multa ista**, R. V. explan. n. 21. **aut** : **partim autem**, ST b (corr.), which also interpolate **similis** after **fuisse**.

89.—27. Bait. and Kl. accept the conjecture of Gar., who writes 'Haec mihi suspecta est verborum collocatio. Facillimum est transposita existimare, ut fuerit : **dum de his singulis iudiciis disputo.** *At etiam potuit esse:* **dum de his singulis disputo, iudices** (*ex usitato compendio* **iud.**).'

XXXIII.—Page 35, l. 1. **at ad** conj. Bait. ; **ad**, ST ; **at**, R. 2. **libeat** : **iubeant**, ST.

90.—5. **tum populo**, ST ; **tum**, R. For the repetition of the antecedent giving an air of formal accuracy to the expression, and here obviating a possible ambiguity, cp. explan. n. on § 49, l. 1. 6. **rogaveris**, ST ; **rogaris**, R : both forms are Ciceronian ; cp. § 98, l. 2. 8. **accusatum**, ST ; **accusatum fuisse**, FM, which would be anomalous Latin after *oportuit* ; **accusatum esse**, Lamb., Or., Class., Ry. The use of the perf. pass. part. with *oportet* is an idiom sometimes found in Cic. (v. explan. n.), but rare in other prose writers : hence the introduction by an ill-taught scribe of **fuisse**. 9. **lege**, om. S : it may be bracketed. 11. **sedata invidia**, ST, Class., Kays. ; **sedata iam invidia**, R. ; Bait. brackets **iam**.

91.—14. **iurasset** : **iura essent**, ST. 15. **quod C. Verres . . . haberet**, *Quint.* viii. 6. 55.

XXXIV. 92.—22. **subsortitus iudicem non erat**, Lamb. conj. ; cp. § 96, l. 13. **aliquam**, ST ; om. R. If **aliquam** is out of place (as Ry. says) so is **aliquando**. But Cic. is speaking of the trial with supercilious vagueness :

for the same reason *iudicem* is superfluous in this line. 24. For **-entio iudicabatur** to **in Fausto tamen** (§ 94, l. 24) we have P. 25. **illis**, PST; **his**, R.; cp. § 96, l. 14. 27. **idem illud**, PST; **illud idem**, R. 28. Also **inquit idcirco**, PST; **idcirco inquit**, R. V. crit. n. on § 41. **populus Romanus**, ST; **PR**, PF; **praetor**, M, and other edd.; some inferior MSS. have **TR.PL.** **PR.** (doubtless the original reading) may denote **praetor** as well as **populus Romanus**: hence the error. Enough has been said of the *praetor* in § 91; Cicero is about to explain (by the fact of the hostility of the tribune) the exasperation of the *people* against Junius.

93.—Page 36, l. 1. **tum**, T; **cum**, S; **tunc**, R. 3. **seditiones**, ST; **seditione**, Kays. But v. §§ 2, 95, **seditiose**.

94.—10. **C. Orchivium**, ST b (corr.); **CORCHIVM**, P; **C. Orchinium**, FM. In § 147, PSTM agree in the form Orchivius. 11. **residuis**: **repetundis**, ST b (corr.): an error. 12. **non quo illi . . . putarent**, Nonius Marcellus, p. 10, 27: **non quod** illi aut exlegem esse Syllam arbitrantur, Priscian vi. 18. 94—a loose quotation. For **quo** P has **quod**; Non. om. **esse**. 15. **posse**: **publice**, ST; **posse populum r.** (*i.e.* Romanum), F. **putarunt**, ST; **putaverunt**, R.; cp. § 90, l. 6, n. All edd. but Müll. read **Quid? conferam Sullamne cum Iunio?** Manutius suggested the punctuation in the text, which is sanctioned by Madv. *Adv.* ii. p. 199. Perhaps Verg. *A.* iv. 371 may be compared: Quae quibus anteferam? iamiam, cet. 20. **pudens**, Ry., Class., Müll.; **prudens**, PSTFM, Kays., Klotz. The same error occurs in ST, *supr.* § 51, and is not unfrequent in MSS. Müll. cp. *Sull.* § 62, *Caec.* § 102, and many other instances. Graev. reads **pudens** from cod. Franc. ii., preferring it as akin in sense to *modestus*: *Planc.* § 27, adulescentis modestissimi pudor. 23. **placata**, ST, rejected by all edd. except Class. for **pacata**, a more ordinary expression. *Post Red. ad Q.* § 2, si mihi tranquilla et placata omnia fuissent (also *infr.* § 138, populum R, sua sponte esse placatum), supports the text.

XXXV. 95.—28. **et humanitate**, om. ST. 33. **P.** restored by Graevius from *Brut.* § 128; **L.**, ST; **C.**, R. Page 37, l. 1. **viri atque amplissimi**, ST; **atque ampl. viri**, R. Cp. § 2, l. 15, explan. n., § 81, l. 1 cr. n.

96.—4. **non solum igitur illud . . . non fuit**, *Quint.* viii. 3. 51; **non fuit istud iudicium iudicii simile iudices**, Mart. Capella, v. § 518. 6. **ullus**, ST; om. R. **adhibitus**, ST; **habitus**, R. 10. **arbitraretur**, STFM; cp. § 25, l. 25, n. **et illis rebus**, Halm conj. 13. **iudicem** is according to Garatoni manifestly wrong, for *Verr.* ii. 1. 157 (quoted in explan. n. § 91, l. 16) has subsortitio *iudicum*; the plural is wanted: accordingly the word is bracketed by Gar., Bait., Kays. (cp. § 92, l. 22), and corrected to **iudices** by Klotz. The sing. may, however, be defended as generic: Müll. ref. to *Flacc.* § 18, quare non iam est mihi contentio cum teste, 'I have done with wrangling with witnesses.'

97.—15. **enim,** ST; om. R. V. explan. n. § 83, l. 18. 18. **crimen,** om. T. here and § 103, *sub fin.* 21. **et quae rus**: Bait. conj. **qua reus.** 28. Müll. suggests a note of interrogation at **dicas.**

XXXVI. 98.—31. **Ti.,** ST; **T.,** R, except one. *Quint.* v. 10. 108, Cicero pro Cluentio Publium Popilium et *Tiberium* Guttam dicit non iudicii corrupti sed ambitus esse damnatos. 32. V. explan. n. Prof. Nettleship, referring to *Quint.* v. 10. 108, and requiring some link between the clauses *qui causam de amb. dixerunt* and *qui accusati* . . ., suggests **quia** for **qui,** and thinks the passage may have run **qui c. de amb. dixerunt** [non de iudicio corrupto] **quia accusati sunt,** cet. Page 38, l. 2. **probaverint,** ST; **probarint,** R; cp. § 90, l. 6, § 125 (three instances), and on the other hand § 117, l. 22. 3. **cum,** STFM; **quod,** R, often confused: Madv. *de Fin.* ii. § 43.

99.—9. **condemnatum,** ST; **damnatum,** R. Cp. § 83; contrast § 170. 11. **eis**: **his,** STF, a common error. All the MSS. have **M. Aemilio.** Man. conj. **Mam. Aemilio.** His full name was M. Aemilius Mamercus Lepidus Livianus: he was consul in B.C. 77, and as proconsul in Italy in the following year had Staienus as his quaestor. Cicero cannot be referring to the notorious M. Aemilius Lepidus, consul in B.C. 78, who in B.C. 77 headed an insurrection to overthrow the Sullan constitution. And he would be careful to avoid the appearance of such reference. Hence we must accept the very reasonable emendation of Man. 15. The MSS. give the wrong figures; § 68 gives the true reading. 16. **reticuit,** ST; **retinuit,** R (so Kl.). The latter merely repeats *suppressit*: the former is too good for a scribe.

100.—18. **illo iudicio**: Müll. conj. **in illo iudicio**: but cp. *Caec.* § 38, si auctoritate virorum talium vis armatorum hominum iudicio adprobata videatur. (There too Pluyg. conj. *in* iudicio.) V. explan. n. 19. **honestis,** ST b (corr.); **honestissimis,** R. 21. **est**: **sit,** ST, Class. 24. **accepisse,** ST; **se accepisse,** R. Bait. conj. **accepisse se,** which Kays. accepts. But the omission of the pronominal subject is an idiom to which Cic. is not averse. Cp. explan. n. on § 36, l. 1, and reff. there to other passages in this speech.

101.—25. **Suscepta sicut** down to **uno iudicio mul** . . . (§ 103) is found in P. **sicut in statuis . . . ad Iuturnae,** Arusianus, p. 213, ed. Lindem.; **Diuturnae,** PSFM, but S with erasure of **D.** 29. **praeferebatur,** P.

102.—33. From **in tota causa** to § 107, **non quaerunt,** there is a lacuna in M and several inferior codd. Page 39, l. 5. **reperietur,** P, Ry., Bait., etc.; **reperitur,** R, Class.; **reperiatur** (and **ablata sit**), Sylv. conj., and Lamb. accepted, from a misapprehension of the sentence. Or. reduced all to chaos by enclosing **cum ita . . . ablata est** as a parenthesis. V. explan. n. [I do not quite like **reperietur,** unless it refer to §§ 124, 125, where *tenebitur* (§ 125) may perhaps defend *reperietur.* I think I should prefer **reperiatur** and **ablata sit,** dependent on *cum.*—H. J. R.]

XXXVII. **103.**—12. **qui**, STF and others; **quis**, R and edd., probably the former is right; cp. § 61, l. 18, si qui ab illis quaereret, and v. explan. n. on § 7, l. 7. 14. **sit**: Halm conj. **est**, which Bait., Kays., Kl. accept. If the indic. is used Cic. makes himself responsible for the statement of a fact; if the subj., it is part of the admission put in the mouth of the antagonist. The correction is unnecessary. 15. **Popilii**, STF; **Popillii**, P. Same variant in § 95. 16. **ecquod**: **et quod**, STF. 18. **dixitne . . . Falcula**, *Quint.* ix. 2. 8. 27. **neque . . . nec**, ST; **neque . . . neque**, R. In § 95, l. 33, there is a similar variant, ST giving **nec . . . neque**. There is no rule for the choice of forms. 30. **tamen**, STF; **tandem**, R. **iudicandam capta nusquam Staienus eadem lege dixit**, ST; **iudicandam captam nusquam St. eadem l. d.**, F; Class., Bait., Kays. Müll. print the former, Ry. the latter, each with an asterisk after **iudicandam**; cod. S. Vict. had **ob rem iud. captanus quam Staienus.** Lamb. restores **iudicandam pecuniam quam St., qui causam nusquam eadem l. d.**: explaining 'though acquitted, Falcula no less than St. might have received a bribe, *ob rem iud.*; Staienus, however, was never accused for having received such a bribe.' Ravius' emendation (adopted by Klotz), **iudicandam pecuniam qua capta nusquam St. eadem l. d.** is nearer to the MSS., but harsher in expression. The reading adopted in the text is taken from Madvig, *Adversaria*, iii. p. 127. There cannot be much doubt about the general sense of the passage. It is as follows:—

Falcula was brought to trial twice: on the first occasion, for having acted informally as juror on the trial of Opp.: this time he was acquitted at the first hearing. 'I waive this first acquittal,' Cicero says: 'that he was cleared upon that count is no proof, I admit, of his innocence of the other charge (pecuniae ob rem iud. captae). [Then what of the second trial of Falcula? It is important, for] *Staienus* was not tried on the direct issue of judicial corruption, of which the court which tried him (maiestatis) had no cognisance. But *Falcula* was thus tried: and was triumphantly acquitted.

Taking the reading of F, the corruption must be localised at **captam nusquam.** The supposed transition (at **nusquam**) from the first trial of Falcula to the second (expressed in the above paraphrase by the words in brackets), is one impossible in any argument intended to be intelligible. We may do one of three things: (i.) make the best of the reading which F supplies. Ry. does this, punctuating and supplementing thus—**accepisse tamen ob rem iud. captam. Nusquam**, cet. 'Even although he may not have been guilty of the offence with which he was first charged, . . . it is still very possible that he may have received a bribe in his capacity of a juror. Staienus, upon whose conviction so much stress has been laid, was nowhere impeached under the same law (eadem lege) as Falcula [*on his second trial*].' The objections to this are: (*a*) the impossible transition aforesaid; (*b*) the tautological

accepisse captam; (*c*) the use of the bare *dixit* for causam dixit (though the technical DIXERVNT, § 73, might be held to justify this). The last is met if, with Prof. G. Ramsay, we punctuate at **iudicandam,** and read **causam** for *captam*; cp. l. 18 *supr.* (ii.) We may hope to find an adequate emendation without abandoning the MSS. altogether. Madv. has given us a brilliant conjecture: **causam nusquam Staienus ea de re lege dixit.** He explains—finita prioris Fidiculanii absolutionis commemoratione, Cic. antequam ad alteram transeat quam proprie ad rem pertinere dicit, rei praeparandae causa breviter interponat, in Staieno huiusmodi iudicium, quod proprie ad captae pecuniae crimen pertineat, nullum factum esse. Madv. argues that the **lege** in his reading is not superfluous: Staienus in his trial for *maiestas* had not to answer *directly* (legitimo iudicio) for corruption (*captae pecuniae*): yet it is hinted that the suspicion of his criminality under the latter count did him little good as regards the proper charge which he had to meet. While adopting this conjecture, I feel that it labours under the same objection as the others in the difficult transition which it assumes. (iii.) We may, with Classen, suppose that there is in this passage 'gravius mendum quam quod leni medela tollatur.' So apparently Kayser, who in his critical note suggests that some such words as these have dropped out after iudicandam: **pecuniam, ut ille, qui maiestatis est damnatus, cum iudex pecuniam accepisset. Causam tamen nusquam [Staienus] ea quidem lege dixit.** Any such suggestion, if embodied in the text, amounts of course to original composition under the name of Cicero. It may be allowable if kept in a critical note. The argument, as I conceive it, could be briefly expressed as follows: accepisse ob rem iudicandam **pecuniam. At videamus alteram** [sc. absolutionem]. **An usquam Staienus eadem lege dixit?** (Or, **Nam causam nusquam St. e. l. d.**) Thus the transition is clearly marked. The frequent repetition of the syllable **-am** might account for the confusion of the text. **Staienus**, far from being doubtful (as Class. and Kays. suggest), is indispensable here, to contrast with **Fidiculanius** below. 31. **crimen,** om. T; cp. § 97, l. 18.

104.—32. **accepisse a Cluentio HScccc**, om. all good MSS. but ST. Comparing *Caec.* § 28 (of the 'minus IƆƆƆ,' 'less than 50,000,' received by Fidiculanius Falcula in the Albianum iudicium), and *supr.* §§ 74, 87, quadragena millia, we may well suspect the figures here. Lamb. emended **HSXLƆIC.** Page 40, l. 4. **adducti**, ST; **abducti**, F; **addocti**, Or. from a MS., which Prof. Wilkins seems to accept, Hor. *Ep.* i. 5. 18, (ebrietas) addocet artis, the only place where the word occurs. Madv., *de Fin.* i. § 14, justifies the use of *adducor*=*adducor ad credendum* (pass. of *persuadeo*), and construed with acc. and inf., or else *ut* with subj.; *ad Att.* xi. 16. 2, ego non adducor, quemquam bonum ullam salutem putare mihi tanti fuisse; *de Fin.* l.c., nam illud quidem adduci vix possum, ut ea quae senserit ille, tibi non vera videantur. Mr. Davies conj. **animum inducti.** 6. **aliud si is**, T; **aliud is,** S; **si aliud is,** R, Lamb., Or.;

aliud si, conj. Halm, Bait. 7. **constarent**, Lamb. wishes to read **constaret**, as also in *de Dom.* § 139, quae si omnia e Ti. Coruncani scientia . . . acta esse constarent. In *Rosc. Am.* § 118, maleficiis quae in illo *constat* esse is now read. Madv. quotes these passages on *de Fin.* iii. § 23, membra nobis ita data sunt ut ad quandam rationem vivendi data esse *appareant*, but here the nature of the verb does not in itself preclude a personal construction. (Of course it is the presence of the infin. which constitutes the anomaly; *e.g.* § 125, dum haec de Oppianico *constabunt* is perfectly regular). An ex. from Livy xli. 20. 2, ut nec *sibi* nec aliis, quinam homo esset, *constaret* looks like a case of *constare* personal with predicative extension, and the influence of analogy in determining construction is not to be denied. I therefore keep **constarent.**

XXXVIII. **105.**—9. **qui imp. . . . aucupati,** Priscian iii. 5. 30. 11. **dementiam,** ST.

106.—19. **uter igitur . . . redderet** (al. *reddet*, which Ern. suggests here), *Quint.* ix. 2. 16. 23. **respondet** is due to Graevius' cod. Franc. i. All our MSS. exhibit **respondit,** which cannot well be defended; though Müll. reads it, referring to § 27, non . . . reformidat, sed . . . respondit, where, however, the pres. is historic; and *de Divin.* ii. § 134, defert ad coniectorem quidam somniasse se . . . respondit coniector . . . fodit, cet., where Cic. might have written postquam respondit c. . . . fodit. Ought we not to read **fuisse** for **esse**? however, v. explan. n. 24. **tales viri,** ST; **ii tales viri,** R, Ry., Bait., Kays. **tales viri** is used to denote 'this honourable court' elsewhere, as in *Caec.* § 38, si auctoritate *virorum talium* vis armatorum hominum iudicio adprobata videatur. 28. **eorum vero . . . laudo.** Mr. Davies (*Hermathena*, vol. ii. p. 399) would transpose these words so as to follow **maluerunt,** and end the section. He explains: 'These [viz. those who voted Guilty], who could by no means acquit a man whom they had found out to be the worst of criminals, and whom they had themselves virtually found guilty on two former occasions, preferred to give a vote of condemnation, when such a bad character was attached to the court, and the suspicion of such shocking foul play, the facts of which were shortly afterwards made public; and I really commend the good sense of those who said that the case was not clear to them,'—apparently connecting *patefacta* with *suspicio.* The difficulty, which Mr. Davies has rightly discovered, may be met otherwise than by declaring the received text 'perfectly unintelligible,' and disturbing the natural connection of *paulo posterius patefacta re*; which also, in its reference to the N. L. voters, accords admirably with the words of § 108, qui distulit, cautus; v. explan. n. 30. **bis,** ST, Class., Kays; **bis iam,** Ry. Bait. brackets **iam.**

107.—Page 41, l. 1. Some edd. have **nominibus.** 2. **fecerunt,** ST; **fecerint,** R. 8. **ita**: Madv. *Adv.* iii. 129 n., corrects to **illa.** I have adopted Pluygers' emendation (*Lectiones Tullianae*), bracketing **ita,** which has no real force (to speak of the rest *as he has done of*

Balbus and Considius, which must be the sense of *ita*, would not be 'longum'), and reading **cognita est** for the MSS. reading **cognita sunt, quaerit** for **quaerunt.** M, in which **non quaerit** are the first words after a long lacuna, may be fairly held to support this reading. In the common reading **quae** (n. plur.) denotes the *unspoken* words; to say that *these* can dispense with the flowers of rhetoric is pointless. 15. **in,** ST; **ex,** FM. 16. *ingenio et virtute par his quos ante memoravi*, Arus. Messius, p. 253. **et diligentia,** om. F and many inferior MSS.

XXXIX. **108.**—21. **agente,** STF; **agitante,** M. 26. **defervisse,** STM; **deseruisse,** R; **deferbuisse,** Lamb., Or., Ry.

109.—32. **ignoratio,** R; **ignorantia,** ST; the former is now preferred in all passages of Cic. but *Acad.* i. 42, and there it rests on the support of a fifteenth-century MS.; v. Mr. Reid on *Lael.* § 70. As far as the forms go, *ignorantia* would express a quality of mind, in the most general way: *ignoratio*, a particular mode of action or inaction: either might take the objective gen. *sui.* The question between the forms is therefore simply one of authority. Page 42, l. 1. **iam,** ST; **etiam,** R; '*Etiam* will indicate extent, *iam* progress,' Ry. 2. **condemnatum,** STF.

XL. **110.**—13. **a,** om. ST, and so Class. But the idiom of the use of *ab* in place of the instrumental abl. is frequent in the case of the passive of verbs of *leaving*: *ad Fam.* v. 2. 10, desertus ab officiis tuis; Caes. *B. G.* iii. 13, ab aestu relictae naves. It may even occur with other verbs where there is personification. Ovid is partial to it, *e.g. Fast.* ii. 85, saepe sequens agnam lupus est *a voce* retentus, 'by the tuneful bard.' (So here *a. t. v.* = a tribunis). 17. **suis ipsis** and om. **fuit,** ST; **suis illis ipsis fuit,** R; Bait. conj. **fuit illis ipsis.** Class. and Kays. read **suis ipsis fuit**; Müll. **illis ipsis fuit.**

111.—18. **facite enim ut vultum ipsius et illam usque ad talos demissam purpuram cogitetis,** Jul. Rufin. *de Fig. Sent.* § 3; and *Quint.* v. 13. 39; v. explan. n. 20. **etiam** after **atque,** om. all but ST; Class. and Bait. om. It is sometimes wrongly omitted in good MSS., as in *Catil.* ii. § 26. 22. **ad,** ST b (corr.); **in,** R. **et iam,** all MSS. but S, which has **etiam.** Müll., Ry., Class. read **et iam.** *Etiam* would be temporal, 'still,' as in Verg. *A.* vi. 485, Idaeumque etiam currus, etiam arma tenentem; *Rosc. Am.* § 117, terret etiam nos ac minatur. In a question it is common in Plaut. and Ter. Pl. *Amph.* i. 1. 120, etiam clamas, carnufex? and in *Verr.* ii. 1. 156 we have 'is mihi etiam queritur quod, *cet.*?' But *et iam* seems less abrupt here; *et* = εἶτα, 'and after this,' introducing an impassioned question, as in Verg. *A.* vi. 807, et dubitamus adhuc virtutem extendere factis? V. Holden on *Planc.* § 71, l. 24. 25. **si qui,** FM and others. So in l. 27. **natus sit,** ST; **vivit,** STFM; **vivat,** Or., after some MSS.

112.—29. **isdem,** M; **iisdem,** R. **vitiis: civis,** ST.

XLI.—Page 43, l. 4. **iudicia,** ST; **ea iudicia,** R. **quaero,** om. ST; so Bait.; Müll. brackets, Kl. reads **quaeso,** which is far commoner

in this parenthetic use. But *leg. agr.* ii. § 72 is similar: quaero, si qui velint vendere non fuerint, quid pecuniae fiet?

113.—5. **At condemnarat . . . a L.**, om. T. 6. All MSS. but S (and T?) insert **omnibus** after **contionibus**. 9. **iudicia fuerunt**: **iudicaverunt**, ST. 10. **aliqui**, ST; **aliquis**, R; Kays. suspects **aliqui Opp. gratis condemnavit iam**. 12. **putaretur**, ST b. (corr.), from which Kays. conj. **putabitur**: or else take the reading of cod. Lambini, **potuerunt** (Bait. and Kl.). FM have **potuit**: so Müll., Ry., Class.—But a good sense may be pressed out of the reading of ST: 'it follows that some one might have been thought (by the jurors who acquitted him) to have honestly condemned O., although he *did* not sit from the beginning.' There is a tone of ironical moderation. For the subj. imperf. cp. *necaretur*, § 45, with explan. n. There is a suppressed protasis, 'si haec ita essent.' **aliquis**, F, Ry., Class. 14. **qui sit**, ST; **quis**, R; Bait. Kl., Müll. read **quis sit**. But *qui* gives a sense sufficiently distinguishable here from that of *quis*: 'I ask,' not '*what*,' but '*what sort of* juror is guilty': 'where we are to look for a guilty juror.' Cp. *Acad.* ii. § 9, statuere qui sit sapiens vel maxime videtur esse sapientis. 15. **cuiquam**: **in quemquam** all MSS. I adopt Madvig's emendation (*Adv.* ii. p. 199, iii. p. 128, **quoiquam**). *Obicere in aliquem* is a construction never used; nor would the change to the dat. *Fidiculanio* have any meaning. The **in** grew out of the preceding letter **m**; Madv. also changes **aliquid** into **aut quidquam** (so Müll.: Mr. Roby too): this seems unnecessary; v. explan. n.; **aliud quidquam** (Mr. Davies conj.) is nearer the MSS.

114.—18. **nitebatur**, ST, Lamb.; **niti videbatur**, R, Ry.

115.—Page 44, l. 3. **ceteris iudiciis**: **cetero iudicio**, Pluygers corr. So Kays. The singular may be more natural: but the plural is generic, and may be defended by *Caec.* § 71, in ceteris controversiis atque iudiciis . . . fictus testis subornari solet: in iure nihil est eius modi. 4. **adhibenda**, F.

116.—6. **quae**, TFM; **qua**, S. The former (the adjectival) form is regular here. 10. **maiestatis**, ST, Class., Bait., etc.; om. R, and so Ry. The repetition of the word in the same sentence is needed in order to contrast *litis aestimatio* with *iudicium*: cp. explan. n. 13. **eosdem**, ST; **eos illi**, R; **eos iidem**, Bait. conj. 15. **iudicium**, om. ST. 18. **isdem**, M; **iisdem**, STF. Madv. (*Adv.* ii. 200) requires **ab isdem**.

XLII. 117.—22. **observarunt**, STM; **observaverunt**, F. V. § 98, l. 2, n. 24. **faciunda**, ST; **facienda**, R. The two forms of the gerundive (*-undo* and *-endo*) are equally common in Cicero's time and in the century preceding him. In Augustus' time *-undo* becomes exceptional. 25. **cum huiusce periculo ceterorum quoque . . .**, ST; so Kays. But this should mean, 'that I may be held to have fulfilled my other obligations *at the peril of my client*' (cp. explan. n. on *sine huius periculo*, § 118, l. 6). It cannot be forced to mean, 'to have fulfilled my

other obligations, together with my obligation to my client now imperilled.' 28. **vestri**, ST; but this form is never partitive. Sen. *N. Q.* I. praef. has *nostri* melior pars animus est, 'of us,' not as a thing divided, but as an undivided whole, 'of our being.' But always uterque *nostrum*, etc. 29. **officii**, all MSS.; Man. emended, 1540. 30. **consuetudo**, ST, cod. Lamb.—scarcely an advance upon *usus*; **necessitudo est**, R. I follow Class. and Kays. A Palatine MS. of Gruter had **consuetudo vel necessitudo**: evidently **consuetudo** is a scribe's gloss., which crept in and ousted **necessitudo**.

118.—32. **rationem**, STFM. Page 45, l. 5. **ex hac**, ST; **in hac**, R; explained to mean, in hac libertate, 'in the exercise of this,' but it is not clear with what verb it should be connected. Lamb. corr. **in hoc**, which Gruter supports from some MSS., and Or. adopts. Then *quam ipse . . . dicendi* must be taken, 'with the loyalty . . . which he has always shown.' 6. **possim**, ST; **possum**, R. The subj. is needed, for *quantum* is restrictive, R. 1694, r. 710. 8. **eius**, ST. Cp. §§ 22, 46, 198, n.n.

119.—15. **tempus exemplis. Ponam**, all MSS. but ST, and this Class. retains, thinking that the final **s** being mistaken for **c** was the origin of **causa**. 22. **ad**: **in**, ST. Cp. § 111.

120.—26. **quos autem ipsi L. Gellius et Cn. Lentulus**, conj. Pluygers, who brackets **duo censores**.

XLIII. 31. **neminem**, om. T. Page 46, l. 4. **causam**, om. ST; **vim**, conj. Halm.

121.—5. **solum illud**, ST; **solum iudices, illud**, R. 7. **sublatas**, ST, cod. Lamb.; **deletas**, F; **delatas**, M, which gives a trace of the true reading. The subscriptio would not be 'erased,' but 'annulled' by the action of electors or jurors. 10. **accepisse**, ST; **cepisse**, R. Cp. accepit, § 113, l. 15. Both words are thus used. 13. **lectos**, ST; **selectos**, R. The meaning is the same, whichever reading we adopt; v. explan. n. Hor. *Serm.* i. 4. 123,

unum ex iudicibus selectis obiciebat.

An inscr. Momms. *C. I. I.* p. 65, xviii. supports **lectos**. Cp. also § 120, l. 3. 14. **impedimentum e. o. dixerunt**, F; and others.

122.—16. **appellare**, ST; **appellari**, R. 19. **praescindat**, ST. 20. **aerario referre**, ST; **movere**, ST. I have ventured to adopt the Active Infinitives: all other MSS. and edd. read **referri, moveri**. No doubt we cannot rely implicitly on the best of MSS. for the choice between **i** and **e**. But Cic. is not unlikely, having begun with **movere velit**, l. 19 (which Or. and Grut. corrected to **moveri velit**, despite all MSS.), to keep the Act. Inf. throughout: which may be used after *iubeo* without an accus. subject *expressed*, *e.g.* *Catil.* iii. § 20 (haruspices) iusserunt simulacrum Iovis facere, where *consulentes* must be supplied, *leg. agr.* ii. § 28, iubet ferre legem. Hor. *C.* ii. 3. 14, flores amoenae ferre iube rosae. So here the accus. subject *scribas*, or some such word, is to be supplied.

22. **populo**, ST; **populo Romano**, R; the *Romano* is due to the initial **r** of *rescindi*. 24. **sint**, T.

XLIV. **123.**—27. After **censores**, S (sec. manu) adds **de illo iudicio corrupto**. 29. **si quia**, S, Bait., Kays.; **si ideo quia**, R, except B, which omits **si quia subscr.** Page 47, l. 2. **dictatorium**, sc. *stilum*, S, Kays. **dictatorium gladium**, R.; Bait., Klotz, Müll. bracket **gladium**. True, we have in *Muren.* § 30, cedat forum castris, otium militiae, stilus gladio: but there Cic. is contrasting civil pursuits with military: here the *subscriptio* of the censor with the *proscriptio* of the dictator, both officers of state using the *stilus* in different ways, In B.C. 82, Sulla at the request of Q. Metellus Pius published in the Forum a list of those whom a few strokes of his 'dictatorius stilus' consigned to execution.

124.—3. **quia verum sit** Halm conj. The indic. of the objective fact is better than the subj., which, like *subscripserint* in l. 28 *supr.*, would express something subjective, the idea in the minds of Cic. and the jury. V. explan. n. on l. 28. 7. **quem ad modum dederit**, om. ST. **aliquod** inserted after **denique** by all MSS. except T which omits, and S which has **aliquid** after Cluentio. It seems that **aliquid** was a gloss on **unum** which has been included in the text in one place by S, in in another by the other MSS. which also read **aliquod**, the adjectival form. 11. **auctoritatem censorum amplexato**, Priscian, viii. 5, 26: **censoriam**, STF: **censorum**, M: **amplexator**, STM, which Kays. says *all* known codd. read; though Bait. implies that **amplexato** is read by F, Class. that it is read by all codd. *except* STM, and two others. Lamb. preferred *-to*: which was the reading of one Pal. MS. The homoeoteleuton with **defendito** is in its favour. As to the form (act. for deponent) it is a survival from an older stage of the language in which many such forms were unfixed. Draeger (*Hist. Synt.* i. p. 150) enumerates 126 instances from Varro, etc. (*Oscito* instanced there from Cic., is uncertain.) 12. **coniunctum esse cum re**, T; **coniunctum cum re esse**, S; **cum re coniunctum, esse**, R.

125.—14. **manu sua**, ST: **sui**, R. 16. **curaverit**, ST: **curarit**, FM. Same variation in l. 17, **necaverit**, l. 18, **curaverit**; cp. § 90, n. 20. **abortione**, S (and cod. S. Vict.): **potione**, TFM. The latter would refer to the death of Dinaea, which is mentioned in the words following; but the crime in connection with Magius' wife (§ 34) would then be omitted, which is unlikely. 21. **uxores**, ST, cod. S. Vict.: **uxorem**, R; the rhetorical plural is supported by § 52, Oppianici hominis in uxoribus necandis exercitati: and perhaps § 171 a socrus, a fratris, ab *uxorum*, a liberum Poenis actum esse. Strictly speaking, Cluentia was the only wife whom he murdered (according to Cicero), § 30. 23. **dare vellet**, ST; **quaereret**, R, a reminiscence of § 55, esse quaesitum. 28. **ista, ipsa**, T.

XLV. **126.**—31. **dicant**, F and some inferior MSS. So Kl. It would give a fair sense, 'though they should state their case as strongly as possible.'

As Class. says, we should expect *gravissimum*, 'put forward their strongest plea,' answering to *quicquam aliud*. But in manuscript, as in speech, corruption attacks words in their extremities first of all. **Page 48**, l. 8. **reliquisse subscripserunt**, TF and others; so Class., Bait., **reliquisse scripserunt**, S; **reliquissent**, R, vulg., Ry. (**reliquisse** *se* **subscripserunt**, Kays., Kl., Müll., but v. n. on § 36, l. 1). Classen objects to the vulgate reading on the ground that the mere *leaving* a man among the *aerarii*—where he was before—would have been no stigma; *subscripserunt*, they drew attention to the fact that they had done so—(of course this argument falls to the ground if we admit that *aerarium relinquere* = *aerarium facere*; but the evidence for this is insufficient. V. explan. n. on this point)—Ramsay's objection to the reading of TF, that *subscribere* properly denotes not the affixing of the *nota*, but the assignment of the *reason* for its affixing, deserves consideration. [Thus Ascon., Cic. in tog. cand., p. 84, Orell.: hunc Gellius et Lentulus censores . . . senatu moverunt *causasque subscripserunt*, quod socios diripuerit cet. Cp. also § 131, which gives a specimen of such a *subscriptio*.] But the case of D. Matrinius is exceptional; he was not 'aerarius factus,' 'in aerarios relatus,' but 'in aerariis relictus': the *subscriptio* to his name must have been exceptional too, and have stated the *fact* as well as the *reason* ('in aerariis relictus est, quod . . .'). Then *subscribere* may = 'state in a *subscriptio*' (pregnant force) as *excusare* and *defendere* = 'state in excuse, in defence.' If this does not commend itself, at any rate the reading of S is preferable to the vulgate. 11. **dixerunt**, STF. Cp. § 121, l. 14.

127.—12. **subscripserint**, F; from this place to § 132, **opinione standum**, M is wanting. 14. **et intimum Guttam**, S. 15. **dicant**: 'prorsus ridicula est exhortatio illa, ut censores aliquid dicant,' Madv., who also objects to Baiter's reading (v. below), which subordinates the infin. sentence to the question **quid est hoc?** Accordingly he suggests **quid est hoc? duos esse corruptos solos pecunia iudicant: ceteri videlicet gratis condemnarunt.**

Orelli has **q. e. hoc? d. e. c. s. pecunia? quid ceteri? v. g. c.**, but there is no good MS. authority for the second **quid**. Bait., **q. e. hoc? d. e. c. s. pecunia? dicant: ceteri v. g. c.** I follow Classen and Kl.: Ry. has marks of interrogation at **dicant** and **condemnarunt**.

Madv.'s emendation is not needed; **dicant** (*censores* being subject) introduces the first alternative, **adferant** in l. 20 the second; v. note there. 16. **non oppressus**, ST; **non est oppressus**, F, and others. 17. **ut non**, S. 19. **suspiciendi**, T. 20. **aut illud adferant, aliquid esse, quod de his duobus habuerint compertum, de ceteris comperisse** is the reading of all good MSS. here, except that T omits **illud**. This must be emended.

(i.) Leclerc suggested **sese** for **esse**. Classen accepts this, so Bait., Kl.

(ii.) Lambinus inserted **nihil** before **comperisse**: Graevius still better **non**, which might easily be lost before the syllable **com-**, 'oscitatione

scribae.' [Cp. Liv. xliv. 27, 1, cum suadere *non* consulenti nemo audeat; Sen. *Rhet. Controv.*, ii. 12, p. 173, Bip. rem *non* controversiae; quoted by Madv. *l.c. infr.*]

(iii.) Madvig (*Emend. Liv.* p. 698, on xliv. 27. 1) reads, combining these, **aut illud adferant, aliquid sese, quod de his duobus habuerint compertum, de ceteris non comperisse**: which I have adopted. So Kays., Müll. Taking (i.) first—As Class. explains it, the line of thought will be—What is the meaning of this stigma upon Aquilius and Gutta? The censors must tell us (*dicant*): it is that two only of the jurors were bribed. *Or else* let them produce evidence (*adferant*), that the fault visited by them upon two was committed by the rest. For (*nam illud* . . . § 128), they will not venture to tell us 'all were equally involved, but we arbitrarily selected two for *notatio*.' This interpretation of *aut illud adferant—comperisse*, is criticised by Ry. as inconsistent with '*nam illud* . . .' and what immediately follows. If it is worth our while to defend an erroneous reading in order to vindicate its many supporters, we might reply that '*nam*' is elliptic in this case: 'Or else let them argue that while punishing two they knew that the rest were guilty: [but this alternative cannot be accepted]: for it cannot be allowed that the censors could have adopted the rough and ready military method of decimation.' But we should expect *idem* for **aliquid**: nor does **adferant** seem to be the right word. As to (ii.), the sense given is much the same as that of (iii.): the sentence is not so smooth. At the same time it is not necessary to suppose (with Mr. Peterson) a harsh attraction, *non comperisse* for *non comperenint*; nor is the omission of the subject *se* at all unprecedented, cp. § 36 n. *Comperisse* would depend directly on *adferant*. 'Or else let them assert (which would be absurd), that they have discovered something peculiarly heinous in the conduct of these two; that as to the rest, they have not discovered anything.' With (iii.) all is clear. There are three alternatives: the censors must say that *two only* were guilty: *or else* that *two at least* were guilty, and on the rest they cannot pronounce. For (*nam illud* . . .) a third supposition that, knowing that *all* were guilty, they made scapegoats of these two, cannot be admitted. (This is substantially Ry.'s view: although in his text he exhibits the MS. reading.) [(iv.) An emendation by Mr. Davies (*Hermath.* ii. 408), merits mention. He emends the MS. reading with **comparasse** for **comperisse**: translating 'else we must suppose that the allegation is, that the censors had found out material facts about the guilt of those two persons, and *had come to a private agreement* that the rest were also guilty.' *Comparasse*, he says, is technical (as in *sortitio et comparatio*): but we want proof of its absolute use in this sense: unfortunately he says that illustration is hardly required, and proof is superfluous. He does vouchsafe Cic. *Fam.* i. 9, se paraturum cum collega 'that he would make things straight with his colleague.' This emendation will not stand against Madvig's.]

XLVI. 128.—25. **consuetudine**, all MSS.; **a consuetudine**, Class., Ry.; **e consuet.** Bait., comparing ex re militari, § 129, l. 18. **statuere**, ST. 27. **sortitio**, ST; from which Class. reads **sortito**, and so Kays. Müll.; **sortitione**, R. 33. **qui . . . deliquerat**, ST; **ne . . . delinqueret**, R. The former reading is much to be preferred: (*a*) because it gives the best connection in sense between this and the previous sentence: *qui . . . deliquerat* is parallel to *miles qui locum non tenuit*: the former sentence states a principle: the latter its illustration in old Roman practice. (*b*) It keeps up the parallelism of the things compared: the offence of the cowardly soldier, as that of the corrupt juror, *has been* committed: it is not prospective. (*c*) The time of the two parts of this sentence **quare . . . comparatà est** is identical. With the reading **ne . . . delinqueret**: (*a*) the connection with the previous sentence is by no means so easy. It is harsh to take *miles* generic ('a soldier') out of *miles qui l. n. tenuit*, 'a runaway soldier' as subject to the verb: yet we must do this with this reading: otherwise *iterum* would be necessary, 'lest the runaway should fail *again*.' (*b*) With *miles* generic as subject, we must take Ry.'s explanation: 'on the one hand, to prevent a soldier from shrinking from his duty in the fight, they held up to him beforehand the terrors of condign punishment in the most comprehensive form; but, on the other hand, when the offence had actually been committed by numbers, they had recourse to *sortitio*.' But there is nothing to show that Cic. refers the one clause to the time *before* the battle, the other to that *after* it, and (*c*) the force of the comparison is thus weakened—Mr. Peterson gives a note of Prof. Nettleship: the reading **qui . . . deliquerat** 'seems to give the sense imperatively required by the whole passage. "For a soldier who *has deserted* his post (*tenuit* perfect) may be afterwards, nevertheless, a better soldier, etc. Therefore if a man *had behaved badly* in war from fear of the enemy, our forefathers held before him a *greater fear*—that, namely, of punishment and death," etc. The point of the passage is that the decimation takes place after the act of cowardice, in order to punish a few by death, and the majority by *the terror of death*: *amplior metus* being the agony of fear endured by the soldiers while waiting to see on whom the lot will fall. This fear, and the sight of their comrades' punishment, will act both as a punishment for the past, and a deterrent for the future. But (he says) there is no real analogy between the soldier who has once shown the white feather and the juryman who has once given a corrupt verdict: the one may retrieve his fault, the other is so tainted as to be unfit for public life.' On this view, *amplior* is not so satisfactorily explained ('stronger than his ordinary fear of death in action'): we might, however, explain it 'more comprehensive,' viz.—than it would be, if only one in ten feared and if there were no *sortitio*.

129.—Page 49, l. 3. **tu**, ST; which Or. had conjectured: **ut**, R. 5. **animadvertis**, ST; **animadvertas**, R. 6. **velis**: Lamb. and Or.

corr. **voles**: v. explan. n. 8. **ignominia quemquam** down to **certe probavisse**, § 131, is found in P. 12. **iuretur**, P; **uretur**, T. 15. **adfici convenire aut quam . . . constitues**, P; **affici convenire ut quam . . . constitues**, F; **affici oportere? convenire ut quam . . . constituas**, Graevius from his MSS.: similarly ST have **affici oportere convenire ut ad quam . . . constituas**, from which Class. conj. **affici oportere? convenitne, ut quam . . . constituas.** But the reading P (to which F is close), makes the best starting-point for these variations, if we suppose **oportere** to have been a gloss on **convenire.** 22. **et**, P; **ad**, R. 23. **et turpitudinem** after **ignominiam**, all MSS. except P.

XLVII. **130.**—25. **Suspitionibus**, T. 26. **a tribuno seditioso**, all MSS. except P insert after **contione.** 27. **multitudini: nemini licitum**, P, confirming a conjecture of Antonius Augustinus: **multitudinem illicitum**, R (**inl. e**). Ry. (Introduction, § 14, p. 57) explains the origin of the corruption: the words would appear in the MS. thus—MVLTITVDININEMINILICITVM: the syllable IN, which occurs twice, was dropt in one instance: hence 'multitudinem inilicitum'; which, corrected, would give **multitudinem inlicitum**, the reading of S. 29. **invidia . . . magna**, all good MSS. except PS. **etenim: et cum**, T. 31. **tabellarum**, P; as Gar. had conjectured: **tabularum**, R. Page 50, l. 2. **ipso in tempore**, ST. 4. All MSS. but P insert **illa** before **iudicia**: for its omission by P, Klotz is our authority: Kays. omits. But **illa** is wanted, '*those*, viz. the senatorial juries,' cp. l. 29 *supr.* **iudicia cum equestri ordine reprehendisse**, all MSS. but P; meaningless, as Ernesti saw.

131.—5. **eosdem**, P; **eos**, R. 6. **praeditis**, P; om. R. 7. **probavissem (res enim indicat) nihil ipsos habuisse cogniti**, so older edd. including Or., Class., Ry.; Madvig first punctuated aright. 8. **ista**, Ernesti and most edd.; **ipsa** all MSS.: T has the same confusion, § 125. 14. **his**, STF. So §§ 27, 99, and elsewhere. 15. **sibi: sibi esse**, ST. **dixerunt**, all MSS.: **dixerint**, all edd. except Müll. As *cum* is the adverb of *qui*, the syntax of the former may be expected, speaking generally, to agree with that of the latter. So *cum* 'whereas' may take indic. or subj., according as it is antithetic or concessive, like *qui*: cp. explan. n. on § 126, l. 3. Here we accept the indic. of the MSS. because *cum* = *quo tamen tempore*, 'at a time, however, at which . . .' Cp. *Div. in Caec.* § 69, nemo mirabatur in Africano illo quod in me nunc . . . simulant sese mirari, *cum* moleste *ferunt*: *de Off.* iii. § 74, is qui non defendit iniuriam neque propulsat *cum potest* iniuste facit.

132.—19. **relinquit**, Bait., Kays., following Lamb.; the alteration is unnecessary: for the historic present may alternate with the aorist in the same sentence: cp. § 27, non . . . reformidat sed respondit; Caes. *B. G.* i. 46, loquendi finem facit seque ad suos recepit.

XLVIII. **133.**—Page 51, l. 2. **existimare**, all MSS. but ST. 4. **posse** is Madvig's conj. for **potuisse**, *Adv.* iii. 129 n. 'agitur enim de censorum deliberatione ante notae subscriptionem.' So in *Caec.* § 97, one of the best

MSS. reads civitatem adimi non *posse* against *potuisse* of the rest of the MSS. If *potuisse* is right, it is very loosely used—'that they had lost the power of ignoring the prosecutor.' 5. **tota** is read after **re** by all MSS., except ST; Kays. om., Bait. Müll. incl. 6. **dico**, ST.

134.—6. Quint. v. 11. 13 gives the substance of this 'exemplum': v. explan. n. 9. **possit** is the reading of all MSS. but three: **posset** of all edd. On the principle stated in crit. n. on § 69, l. 24, qui id efficere possit, the MS. reading may be retained: although the occurrence of such variants as *posset* for *possit* (§ 30, l. 17) forbids us implicitly to trust the MSS. by themselves in such cases. 12. **ita**, ST; **itaque**, R. 14. **consuerunt**, all MSS.

135.—20. **ob**, S; **ab**, T; **ad**, R. 25. **adiungeret**, ST b (corr.) codd. Lambini: **coniungeret**, R. **sed tu Acci . . . retinuerunt**, Quint. v. 13. 33. 26. **censorium**, ST; and Quint. *l.c.*, so Müll.; **censorum**, other MSS. and edd. A similar variant in § 124, l. 11, *censorum* for *censoriam*, has the support of M and Priscian. Cp. also *de Harusp. Resp.* § 30, where the MSS. give *censoris* or *-es* for *-iis*. The use of the adj. is quite Ciceronian: cp. § 68, l. 17, explan. n. 29. **censorem**, S; **censorium**, Quint. *l.c.*

XLIX. **136.**—**Page 52**, l. 3. **circumventus**, ST; **circumventus esse**, R. Cp. the variants in § 127, l. 16, § 81, l. 28, § 77, l. 9. R may be right.

137.—15. **tum**: **cum**, M, and other codd. Gar. adopts the latter, punctuating thus—num anno post . . . Cassius? in quos cum consules designatos idem illud senatus decreverit, non tulerunt: thus embodying the reading of ST and Graev., **decreverit**. But an answer is wanted to the question *quaero num . . . tulerit.* Cp. n. on § 149 as to rhetorical questions. 17. **ulla vel tenuissima**, Lambinus; so Orelli. But v. explan. n. 18. **primum**, STM; **primo**, F; and earlier edd. 20. **referendum**, ST; **perferendum**, R; older edd. prefer the latter, because the ordinary phrases are *ferre* ad populum, *referre* ad senatum. We must, however, with Or. understand *referre* as = 'rursus, denuo ferre,' 'to carry back to the people,' 'propose anew.' Cp. § 86, te quod tum explosum . . . est, rettulisse, 'have rehabilitated.'

138.—26. **mare quod . . . agitari et conturbari solet**: **sic populus Romanus**, Iul. Rufin. *de Fig. Sent.* § 24. 28. **sic**, ST, and Rufin.; **sic et**, R.

L. **Page 53**, l. 1. **cum**, SM; **tum**, F; om. T. The MSS. constantly confuse the two: but we may accept it as a rule for the classical period that *tum . . . tum* . . . only means 'at one time . . . at another time': *cum . . . tum* . . . 'not only . . . but also . . .' So *leg. Manil.* § 31, maria omnia cum [*al.* tum] universa tum in singulis oris omnes sinus. **aliorum**, conj. Ernesti: **illorum**, all MSS. 5. **illo**, ST; **in illo**, R.

139.—15. **omnes enim illae**, S; **omnes enim**, T; **omnes enim illae orationes**, R. **ac**, STM; **et**, F. Cp. § 19, l. 25 n. 16. **aut**, ST; **ac**, FM. 19. **dicantur**, T, and an 'old MS.' of Lamb.

140.—20. **Numquam ullam**, S. 22. **negare**, ST; **se negare**, R; v. crit. n. on § 141, l. 20. 23. **si** before **quid**, om. all MSS. but ST; Lamb. read **quod**. The loss of **si** after **quasi** need not surprise us. Without **si** we should have to make **quid . . . actum sit** depend on *comprehendatur*: in which case the intrusion of **id nisi l. mand.** is very awkward, especially as the reference of *id* is not very clear in that case.

LI.—26. **isto**: **ipso**, ST; cp. § 131, l. 8, n. **cum hominis**, T; cp. § 138, l. 7 n; **hominum tum**, F and others. 27. **C.**, ST, and best codd. of Quint. (who tells the same story vi. 3. 43): **L.**, R; Schütz conj. **Cn.** from *de Orat.* ii. § 220, which most edd. adopt. 28. **Plancum**, all good MSS. here, but *de Orat.* ii. § 220, **Plancio**; Quint. *l.c.* has gen. **Planci**. Lamb. and Or. read **Plancium**. 31. **curasset et quod**, ST; wrongly.

141.—Page 54, l. 6. **et ex**, S; Kays., Müll.: **ex**, T; **et**, FM; Bait. As in §§ 3, 10, 17, I have retained the repeated preposition: about which there is often an uncertainty: *e.g. imp. Pomp.* § 28, e ludo atque e pueritiae disciplinis (Kays.: Halm om. the second *e*). *Catil.* ii. § 5, illum exercitum *ex* Gallicanis legionibus . . . *et ex* his (*al.* et his), copiis . . . contemno, where we should combine the conjectures of Lamb. and Müll., and read illum exerc. *prae* Gall. leg. *et prae* his cop. cont. 9. **ipse**, ST; **et ipse**, R; which is very doubtful in Cic.; cp. explan. n. on *etiam ipse*, § 58. 12. **Privernati**, Priscian, Quint. l.c., *de Orat.* l.c. Yet *de Orat.* § 263, villam in Tiburte habes. The forms in *-ti* are by far the commoner. 15. **Albanum . . . filius**, om. SM. **Tiburti**, T, and most good MSS., including cod. S Vict. (acc. to Sylv.). **Tiburte**, R; cp. *de Orat.* ii. § 263. 18. **testificari se voluisse**, ST. 20. **eas tamen**, ST; **eas se tamen**, R, and edd. except Class. The different reference of *se* in this latter clause would create an awkwardness: nor is it required. Cp. crit. n. on § 43.

142.—27. **fuere**, ST; a rare form in prose, except that of Sall. and Livy. Cp. § 128, statuere (ST). 28. **ista**, MSS. except ST; **ita**, ST; **illa**, Halm conj. V. explan. n. 30. **cognosse**, S; **cognosce**, TM; **cognoscere**, F. 31. **illa**: **ea**, ST. Page 55, l. 1. **huc**: **huic**, ST, but the **i** is erased in S. Cp. § 6, ne quid huc praeiudicati adferatis, where there is the same variant. 2. **attulissetis**, ST.

LII. **143.**—8. **Nam hoc . . . ipsa renuntiavit**, Quint. v. 13. 47. **dixisti**; Quint. has **dixi**, and Kl. conj. **dixti**, which can scarcely be Ciceronian: v. R. § 621. 10. **imprudentes videlicet**, S; Quint. l.c.; T om. **imprudentes**: **videlicet imprudentes**, R. 11. **nobis**: **nostros**, ST. 12. **hoc tibi**, ST; Quint.: **tibi hoc**, R. 13. **cui ego autem**: **cui ego**, S; **cui**, T. Bait. brackets, Kays. om., Quintil. has **autem**. Cp. § 167, crit. n. 14. **et**, ST; **sed**, R; om. Quintil. Cp. § 148, *et* periculi, with n. 15. **defendisse**, Manut. emend. from **defendissem**, which all MSS. read, and many older edd. accept, taking from F and

other MSS. the reading **hac** for **ac**, which necessitates it. Cic. has not yet mentioned any law which could be referred to by **hac lege**.

144.—19. **fortassis**, ST; so in § 201; **fortasse**, R, and edd., except Bait., Kays. The former is the older form (a contraction probably of *forte an si vis*), and occurs but rarely in the classical period. V. L. and Sh., *fortasse*, for a list of passages, to which add *Sest.* § 12, *Verr.* i. II. § 107 (where it has very strong MS. support): *de Off.* ii. § 20, *Balb.* § 61. It is an archaism, probably in vernacular use. 20. **displicetne mihi**, ST; Halm conj. **displicetne tibi**. **Capitis**, ST; cod. S. Vict. (?): **a capite**, R. 26. **eo capite**, T; **de eo**, R. 30. **videbantur**, ST; **viderentur**, R.

145.—**Page 56**, l. 1. From **-ne lege cop.** to § 147, **et praescripto**, we have P once more. 4. **esset actum**: **fuisset actum**, ST. Same variant in § 81, where ST are right. 5. **obtineremus**, PST; **obtinerem**, R.

LIII.—6. **commovet**, P; **commoveret**, R. Class. and Ry., adopting the latter, begin a new sentence (Ry. a new chapter), with **quod si nihil** . . . Class. objects to the ordinary arrangement of the sentences (which I have adopted), on the ground that it makes Cic. speak as if he based his whole defence on the *lex*: in fact, on the ground that **commovet** states absolutely what **commoveret** would state conditionally. But **neque** evidently introduces the text for a fresh argument—that law exists not to be discussed, but to be obeyed. Thus the indic. is required, with a fresh paragraph.

146.—11. **contineatur**, PST; **teneatur**, R. 14. Isid. Hispal. *Originum* ii. 29. 13, lex est mens et animus et consilium et sententia civitatis. 15. **Ut corpora . . . non potest**, Quint. v. 11. 25. 16 **sine mente**: **in mente**, P. 17. **et sanguine**, P and others; **ac s.**, STFM; Quint. 18. **legib. niq.** (sic) **idcirco omnes servimus**, P; from which Bait., Kays., Müll. read **legibus denique idcirco omnes servimus**. I have retained the reading of R, and the older edd. (including Class. and Ry.) for the sake of the triple repetition of **legum**, and the balance of **servi sumus** with **liberi esse**.

147.—27. **ante**, PST; **antea**, R. 28. **ergo**, PST; **ergo est**, R; so Ry. 30. **C. Orchivii**, TM; **Corchivi**, P; **C. Orchivi**, S; **C. Orchinii**, R. Cp. n. on § 94. 31. **ambitus**, ST; Kays., Klotz, Class.: **de ambitu**, R, including P, so Ry., Bait., Müll.: the last of whom says that we never find *sceleris* causam dicere. Cp. also *Sest.* § 18, ne de ambitu causam diceret. But we often have *capitis* causam dicere; and in such expressions the crime and penalty are often confused, *e.g.* with *damnare* (v. explan. n. on § 97). In such a case we may be guided by the principle 'potior lectio difficilior.'

148.—**Page 57**, l. 1. **qui**, FM, and most others. 3. **et per.**, ST; **sed per.**, R. § 143 n. The anaphora would be strained. *Sed* (*set*) and *et* are easily confused, especially after final *s*.

LIV.—10. **emerit**, om. ST. 16. **coit**, here and below STFM;

coiit, many others. 19. **intersit**, ST; **interest**, R. 22. **idem**, ST; **item**, R. 24. **inve**, TF, and others; **in**, S; **quive in**, R; a reminiscence of the earlier part of the section.

149.—27. **noluit**, T; Lamb. Müll.; **nolit**, R, Class., Ry., Kl., MSS. often confuse indic. and subj.; *e.g.* § 107 fecerunt, § 118 possim, § 122 adepti sunt, § 144 videbantur, with variants. Here the indic. is better: 'whatever else he may be, he is at all events (*tamen*) one who has refused to shelter himself behind the terms of the law': the plain statement of a fact. Cp. the words of § 145, qua hic me uti noluit. Classen punctuates with a mark of interrogation at **nolit** instead of at **Cluentius**: arguing that the words **qui . . . nolit** are inadequate as an answer to the question: but that the question, if they form part of it, is unanswerable, and as such, an apt conclusion of the argument. 'Who then *is* this Cluentius (who is no magistrate, etc.), although he refuses to stand on the terms of the law? why, he *lege non tenetur*.' This is strained: and again, such rhetorical questions are uncommon in ancient oratory, which generally *answers* its own questions. Cp. § 137 n. 31. **se**, om. ST. But **sua . . . se** answer to **mea . . . me** in next line. Page 58, l. 1. From **dicenda est** to **quae tunc** (§ 154), M is wanting. 6. **enim**, T; Kays., Müll.; **ego**, R and other edd. 7. **te a me desiderare**, ST; Class., Kl. If with Class. we referred **te** to Accius, we should have to suppose the words to be ironical, 'the refutation which you seem so anxious to meet.' But the sudden transition from Cluentius to Accius, even supposing the orator to make some gesture in explanation, is almost impossible, especially as the voc. **Acci** only appears in the next sentence. For the confusion of the act. and pass. infinitives, cp. § 122 n.

LV. **150.**—11. **eiusmodi**, ST; **huius modi**, R. 13. **recusavit ne cum**, Bait. conj., Kays.; **accusavit ut cum**, codd., so Class., Ry.; **recusavit quin quo**, Lamb. and Kl.; **recusavit ne quo**, Müll.. Below Ry. (under protest) reads with Lamb. and Or. **uti non oportere**, which seems to be simply a conjecture of Man. Mr. Peterson in a note defends the MSS. reading. But the gain to the sentence in clearness and point is very great, if we read **recusavit** [cp. recusatio in § 148, init.] and **quo**, while the change from **ut** to **ne** may be defended by their not infrequent confusion in the MSS., *e.g.* in § 170, and *Mur.* § 11 ad fin. If we retained **ut**, we should need the **non** of Manutius below: for we can hardly suppose with Class., that after *recuso* Cic. would use *ut* c. subj., as the equivalent of the simple infin. even when explanatory of *hoc*: however, v. explan. n. on § 16, *esse faciendum . . . ut*. 22. **summum**, ST; **in summum**, F. In § 110 we have *in* locum ascendere, and elsewhere *ad*: the simple accus. is wanted for **petiverunt** here, and may be paralleled from *Font.* § 4, quae facilius possit Alpes quam paucos aerarii gradus ascendere. The intrans. construction is commoner.

151.—33. **qua est usus**, Manutius' fine emendation of the MSS. reading **quaestus** or **questus**. Lamb. expunged the whole clause, supposing it

to be a marginal note, *quaestio in vet. iud.*, altered and foisted into the text.

152.—Page 59, l. 8. **sese**, ST; **se**, R. The emphatic form of the reflexive pron. here answers to its emphatic position, and the somewhat unusual construction of *volunt*: v. explan. n. 11. **in potestate sua**, read by all MSS. but one, and emended by Man. Cp. § 130, in invidia (most MSS.). Final *-m* is in MSS. very evanescent. **si constitutum est . . . iudicarent**, all MSS.; Lamb. first read **si const. sit . . . iudicarint**, the last word after Man.: Class. and Ry. retain the MS. reading. Classen argues that the indic. represents their confident hope ('the certainty they felt,' Ry.), 'qua tanquam factum sibi proponunt quod sperant.' That is, we have *si const. est* for *si const. sit* of strict or. obliqua. But it should be *si const. erit*, the 2d Fut.: the Perf. Indic. requires that the action be completed at the moment of speaking. In fact the *tense* is the difficulty. The required correction is a very simple one. *Sit* and *est* (written *st*) are often confused in MSS. Cp. § 148 n. Still less can **iudicarent** be defended, explained as 'the class of men acting as jurors,' as opposed to the jurors of any particular trial. The tense is again the difficulty. Contrast the Pluperf. *iudicassent* (§ 153), to which a Perf. in primary time (as here) must correspond. In *Mur.* § 5, a similar correction is desirable (legem hanc) ita tuli ut eam quam mihimet ipsi iampridem tulerim . . . non abrogarim (for *-arem* of MSS.): there, however, Cic. may look back to the time of the passing of the law (cp. § 148 *supra*, qui . . . convenit convenerit, quo quis . . . condemnaretur): here, in the nature of things, the standpoint of thought cannot be changed to the past.

LVI. 153.—21. **ageret quam cum illa c. q. t. erant nobilitatis**, all the MSS.: early corrected. Graev. objects to the concrete meaning of *nobilitas*: but v. explan. n. 22. **ut ei qui**, a conj. of Halm, so Bait., Kays., Müll.: **utique**, MSS.; **uti qui**, Man. conj., Class., Ry. 24. **ceterique eiuscemodi ordinis**, ST; **ceterique huiuscemodi ord.**, R. The occurrence of **huiuscemodi** four times in two sections would by itself be suspicious: here, where it is meaningless, it must be false. Class. suggests **equestrisque**, in place of **ceterique** (two MSS. have **ceterisque**), and would eject **huiuscemodi** (**eiuscemodi**), without compensation; Bait., Kays., accept this emendation, which hardly accounts for the reading of ST. Kl., Müll., and Madv. (*Adv.* ii. p. 200), read **ceterique eiusdem ordinis**, which must have repelled previous editors by its simplicity. 27. **recusarent**: Madv. *Adv.* ii. p. 200 conj. **reputarent** (so Müll.). He argues that *repugnarent cum recusarent* (hoc est *repugnarent*) is tasteless: and that *haec* after *recus.* should be *hoc* (as referring to one chapter of the law). But the pleonasm objected to is in Cicero's style: and *haec reputarent* after *ut aliquid . . . putarent* would be somewhat misleading. (Man. conj. **cum et recusarent.**) **Page 60**, l. 1. After **iudiciorum** many edd. give the word **anfractu**, which apparently would mean 'intricacies' here, but which rests on no MS. authority. Prof.

Nettleship explains it, 'circuits of the law-court,' 'assizes as they come round,' comparing *Rep.* vi. 12, where it is applied to the circuit of the sun in the year. The derivation is *anfr-* (=*amb-*, *around*) *actus*, R. 184.

154.—12. **insignia** bracketed by Bait., Kays., as also is **exercitus**: partly because the parallel passage *Rab. Post.* § 16 omits—delectat amplissimus civitatis gradus, sella curulis, fasces, imperia, provinciae, sacerdotia, triumphi, denique imago ipsa ad posteritatis memoriam prodita,—but **insignia** may well denote the lesser ornaments, whether of the magistrate (as the ivory staff), or the senator (as the calceus lunatus). In *Sest.* § 17, it is associated with *fasces* similarly—se illis fascibus ceterisque insignibus summi honoris atque imperii ornatos esse. V. Rich, *Dict.* art. *Consul.*

155.—20. **ea**: **ex**, ST. **tenetur**, ST; **teneretur**, R; Ry., Müll., Kl. Indic. and Subj. are often confounded in MSS. (cp. § 149 n.): but where grammatical considerations permit, we follow the best MSS. 21. **agimus**, S; v. prev. n.

LVII.—26. **iniquum**, so all MSS. save two which give **indignum** (Lamb. and Or.). Cic. retorts upon Accius his own complaint (v. § 150 init.): 'If there is unfair dealing in the question, it is not the senators who are the victims, but the people of Rome, who are in danger of being compromised by the action of a jury which they never sanctioned.' (Ry. notes this variant in the wrong place, viz. § 154 init.) 28. **se** before **sine cura esse**, S, Kl.; omitted by FM and others, also by Madv. (*Adv.* ii. p. 200); **ipsum**, R, other edd. If there is a pronoun here, it must be **ipsum** [) (**vobis**]: which most MSS. substitute for **se** of S which grew out of the last syllable of the preceding word. 30. **arbitraretur**, FM; cp. § 25 crit. n.

156.—33. **causam dicit eques Romanus**, ST; **eq. R. c. d.**, R; not so well, for the emphasis on **eq. R.** is necessary. But ST wrongly om. **lege** after **qua**: v. explan. n.

157.—**Page 61**, l. 10. **hominum**, ST, Lamb.; **omnium**, R. Cp. § 17, ad *hominum* pericula defendenda, where inferior MSS. have *omnium*. 15. **infinitum et incertum**, all MSS. but ST; **inc. et inf.** is preferable for the sake of the chiasmus with **cum infinitum tum obscurum et occultum**, which for the same reason is preferable to **cum incertum et infin. tum obsc. et occ.**, of Lamb., Or., Ry., which has no good MS. authority.

158.—21. **sed hoc . . . facessetur**, *Prisc.* viii. 3. 11; where most MSS. give **facessitur**, which is clearly wrong. S has **facesseret**.

LVIII.—32. **religionibus . . . vestris**, ST (S has **nostris**): which could only be defended as the plur. of a noun of emotion, 'conscientious feelings'; cp. explan. n. on *offensiones*, § 139. But in actual usage it always means 'ceremonies of religion,' as in § 43. Cp. religioni . . . paruerunt § 121.

159.—33. After *iudicis*, ST have an interpolation, **meminisse se hominem**; all edd. reject except Klotz who brackets. **Page 62**,

l. 5. **cogat**, om. ST. Pluygers conj. **iudicare** for **cogitare**. 9. **reputare solum esse**, ST ; **putare esse solum**, R.

160.—20. **rei** ST : **rei publicae**, FM, and most inferior codd. 'Pro rei dignitate quae ad multas causas pertinet' Class.

LIX.—28. **potuerint**, ST : **potuerunt**, R. Cp. § 155 n.

161.—30. **Decidio**, STF : **Decitio** M. Two inscriptions (*C. I. L.* v. 1187, 1188) support the reading of STF. 31. **dixit**, ST : **dixisti** almost all other MSS., so Class., Kays., Kl. : **dixistis**, Man, so two inferior codd. Müll. reads **dixistis**, which is right. Cic. is addressing not Accius alone, but the whole body of accusers (*illi*, § 160). Cp. § 168 *dixistis* : § 169 *dicitis*, so § 183. In § 186 he turns to Accius alone. **Page 63**, l. 2. **villicos**, Lamb., Or., Ry., after a MS. of Sylvius. Unnecessary : one of the *vilici* evidently took the lead. 3. **callibus** conj. Ern. for **collibus** of MSS. which Ry. and Class. retain. Cp. *Sest.* § 12, Italiae calles et pastorum stabula.

162.—11. **Floro**, ST, cod. Sylvii : **Florio**, R. 12. **debere**, ST : **deberi**, R. cp. § 140, posset negare dixisse. 15. **Cei**, ST : **Gn.**, R. : **Celii**, Lamb. ; **Caelii**, Or.; below, ST have **Ceio**, M has **Celo**. Inscrr. support the form **Ceius**.

163.—21. **servis**, ST : **servo**, R. In the same line **isto** in Ry. is a misprint. 22. **vobis** : so almost every good MS. A few have **nobis**, which Madv. (*Adv.* ii. 201) adopts, and so Müll. Madv. argues that the letter **v** contains several absurdities : *e.g. iudices*, even if their verdict be favourable, are not *patroni*. *Fortasse* he explains, 'if we are asked by Cluent.' : the weakness of this is evident ; it should mean 'with us, perhaps, as his (*Ennius*' not Cluentius') advocates.' The former argument is beside the mark. *Vobis* is addressed not to the *iudices* at all, but to Accius and his supporters : cp. § 161, *dixistis* crit. n. . . . There is pungency, too, in this reading—'Accium furis cuiusque causam suscepturum esse dicit,' Class. 24. **hospitem**, ST, Cod. S. Vict. : **hospitum**, R. The gen. of quality is, in the case of a concrete word, unknown to good Latin, except in the case of a concrete word which denotes something essential and inalienable, and takes the place of an abstract subst. We might cp. homo trium litterarum ; *ad fam.* ix. 26, non multi cibi hospitem ; Sall. *Jug.* 85, hominem veteris prosapiae ac multarum imaginum ; *Rosc. Am.* § 17, plurimarum palmarum vetus gladiator ; *Leg. Agr.* ii. 36, via multarum deliciarum et magnae pecuniae. These genitives respectively express the qualities of thievishness, large appetite, nobility, distinction in the ring, wealthy display. So too the gen. **multorum hospitum** is equivalent to 'great hospitality,' and is so far superior in force to the reading of ST, that I have ventured to retain it. Some pedant who disliked its colloquial vigour early corrected it to **multorum hospitem.** **Ambivium**, T : **A. Bivium**, SM.

164.—30. **causam** ST b (corr.), **vitam** R, Class., not so good ; I have left it in the text by an oversight.

LX. 165.—**Page 64**, l. 7. All MSS but ST have **C.** before **Vibium. Cappadocem**, ST b (corr.); a cognomen found in two inscrr.: other MSS. have **Cauponem** or **Capacem**; the latter Bait. Kays. adopt. We cannot get any conclusive arguments from internal evidence. That he stayed at Rome with a *hospes* is not evidence that he was not a Roman citizen, but an Asiatic (Cappadox). He may have been an Italian. Ry. argues that C. Vibius Cappadox would be 'the Asiatic freedman of some C. Vibius,' and no fit guest for a senator. Is it not equally probable that he was at once an Italian born, and surnamed Cappadox from some exploit in the Mithradatic wars? Vibius is a Samnite name, but one which made its way to Rome, according to Momms. *Unterital. Dial.* p. 242. We find a Sex. Vibius at Larinum, § 25. 11. After **mortuus** MSS. (except STF and others) read '**aut heres est Cluentius**,' emended **at** (**haud** Lamb.) **heres est Cluentius** by edd. Plainly 'haud h. est C.' was interpolated by those who thought the transition from **est mortuus** to **intestatum dico esse mortuum** abrupt, if not a vain repetition. But Cic. intentionally repeats and amplifies: . . . intestatum (this is the emphatic word) dico esse mortuum; *i.e.* had Cluentius been a *captator* or legacy-hunter, the man would have made his will in time. 13. **ex edicto praetoris**, ST: **praetoris edicto**, R.

166.—19. **Babuttium**, ST; **Balbuttium**, M. 21. **hoc ego . . . pluribus** (om. **verbis**) **dicerem**, Quint. ix. 2. 48: 'I suspect that Quint. is right,' Prof. Nettleship. The sentence is neater without **verbis**, which I bracket. **bibisse** Pluygers brackets. 22. **per quae**, ST; **quae**, R. Both constructions are Ciceronian: haec quae ego nunc percurro, *Balb.* § 50, per omnes civitates . . . percurrit oratio mea, *Verr.* ii. III. § 100. Intransitive verbs compounded with a preposition often become transitive in usage: a tendency which, beginning in classical times, is found in later Latin in full development; *e.g.* *percurro* transitive is classical, *percurso* is post-classical. The poets did much to confirm this tendency.

167.—23. **quid umquam . . . accederet**: Davies in *Hermathen.*, vol. ii. p. 396, suggests that these words belong to § 170, as they make no sense here: 'Why could not the younger Opp. utter a word against Cluent. in this very trial? Sure enough he is the prosecutor. It is he who says everything: everything that Accius pleads. He is at the moment enjoying and exercising the full rights of a Roman citizen. The lines refer to the elder Opp. who was an exile, civilly dead, and belong to the following context § 170, quo tandem *metu* adductus . . . conatus est? quid umquam Habitus . . . Opp. *metuebat cum ille . . . accederet?* Quid erat quod iam Opp. . . . quisquam *timeret?* quid *metuebat?*' The four words in italics, he says, indicate the argument. If Cluent. tried to poison the elder Opp. the probable motive would be *fear*. Now what could he *fear* in him? In the case of the younger Opp. the *fear* could not, even rhetorically, be denied. I think I have shown, in the explan.

n., that a fair sense may be got out of these words as they stand. At the same time it must be allowed that the similarity between the opening words of § 167 and 170 is singular and perhaps more than accidental. I would suggest that we have here two recensions (by Cicero's own hand) of the argument as to *Opp. the elder* embodied in our text: *quo tandem igitur . . . laederetur* (§ 170) is a more highly finished version of *quid umquam . . . potuerit* (§ 167): the words of § 167 huic autem . . . accederet may have belonged to either place originally. And it would be idle to attempt now to unravel what has been woven into a consistent whole. 27. **matre viva deesse non possent**, all MSS. but ST, which also alone (with Lamb.) give **id.** 29. **quod autem . . . autem datum,** Quint. ix. 3. 37. 30. **illa frequentia**, ST, so Kays., Bait., Müll.; **in illa,** R, and so Quint. But in *Leg. Agr.* ii. § 55 we have vectigalia locare nusquam licet nisi in hac urbe, hoc ex loco, *hac* vestrum *frequentia.* The abl. is one of circumstance, R. 1242, r. 504. 31. **deinde**: **porro,** Quint., 'more idiomatic' (Prof. Nettleship). Momms. om. **autem**: Bait. brackets. Cp. § 143, where some MSS. omit it. But it has a very distinct force, especially when thus placed late in the sentence: it marks a new departure in the process of objecting: the new question being contrasted with those that precede. The speaker impatiently breaks off. 'Why, in fact, was it not given over again?' So Verg. *A.* ii. 101, sed quid ego haec autem nequiquam ingrata revolvo? 33. **se**, ST; **iam se,** R, so Ry., Klotz; Bait., Kays. om., Müll. brackets **iam**. Cp. § 90, crit. n. **defendit**, STF, modern edd.; **defendat,** M: **defendet**, conj. C. Stephens, Lamb., Or.

168.—Page 65, l. 3. **crimen,** ST b (corr.), om. R.; om. Ry. and Cl. **perspicite cetera**, Kays. brackets, M has **persp. et cetera**. 5. **tum**: **tamen** in ed. of 1472, revived by Ernesti, read by Or., Ry. **quis**: **qui,** ST. 7. **ad quem**, ST, but **ad** expunged in S. 8. **illo,** Halm emends **isto**. At the end of this section Lamb. reads TESTIMONIUM BALBUTII PATRIS: which Or., Ry., Class. bracket but read.

LXI. **169.**—17. **hosce**, ST; **hos** R. 18. **habuit**, ST b (corr.): **habeat**, R, Class., Ry., Müll., Bait., Klotz and Kays. read **habuerit,** which probably gave rise to **habeat** (more natural with *hoc tempore*) and **habuit** (a frequent error in the MSS.: cp. § 157, *dixit* but in ST *dixerit*, *Sull.* § 38, *responderit* for respondit, *leg. agr.* iii. § 15 *promulgavit* codd. for *promulgaverit*). 24. **inter ipsos fuisse**, F and other MSS., Ry. Class. **inter eos fuisse**, M and others: **fuisse**, ST. Kays., Müll., Bait. bracket **inter ipsos**. A somewhat similar instance in *Deiot.* § 30, *sint* sane *inimicitiae*, quae esse non debebant . . . tamen inimicitias hominum more gerere poteratis. 25. **eos**, ST, om. R.

170.—27. **conatus est**. After these words Mr. Davies would insert **quid umquam . . . accederet** from § 167, v. crit. n. there. 28. **et,** ST; om. R. 30. **damnato**, ST; **condemnato**, R. Contrast § 99 n.: R may be right. 31. **sin**, codd. except ST, Bait., Class., Ry.

inimicum, om. all but ST; found in Lamb. This illustrates, as Class says, his trustworthiness in following his codd., even where they give what seems superfluous. **Page 66**, l. 2. **audire**, all MSS. First corrected to **adire** in the Cratandrine ed. of 1528: **aspicere**, ST, Lamb.; **respicere**, R. As Class. says, for the climax the reading of the text is necessary: 'domi suae aliquem non recipere, non adire domum eius, eum non adloqui, denique ne aspicere quidem.' Cp. also § 41, a similar climax, *aditu* . . . congressione . . . sermone . . . convivio. Ry. rightly distinguishes *respicere* and *aspicere*, the latterly frequently denoting '*to see*, without implying any exercise of the will,' the former 'necessarily implying a deliberate act': and maintains that in the present passage we must prefer the former. But upon reflection it will appear that *aspicere* (a mechanical rather than conscious exercise of the will) gives exactly the sense here wanted—men would not see Opp. when he stood before their eyes, they 'cut him dead': whereas *respicere* would not be nearly so forcible—men would not turn to look after him. In truth there is rhetorical exaggeration in *aspicere*. Cp. its use in a similar passage *Catil.* ii. § 12, quis eum senator appellavit? quis salutavit? quis denique aspexit?

171.—8. **offerre**: **auferre**, ST. 10. **ineptis fabulis**, ST; **ineptiis atque f.**, F; **ineptiis ac f.**, M. 11. **ad**, ST, Müll., Class.; **apud**, R, Bait., Kays., Ry. The two prepositions are sometimes confused in MSS.: in *Catil.* i. § 19, *ad* M' Lepidum, v. l. apud *Phil.* xiv. § 32, ad inferos poenas parricidii luent. 13. **uxoris**, ST. 15. **eripuit mors**, T; **mors eripuit aliud**, S; **aliud mors eripuit**, FM. *Aliud* is sometimes omitted: § 140, cum multorum (aliorum); so occasionally after *aliquis*, Plaut. *Capt.* 379, aut me aut aliquem nuntium. Cp. § 179, cr. n.

LXII. 172.—20. **igitur**, ST; **deinde**, R. 23. **tam**: **iam**, FM and others.

173.—27. **latius**: Victorius conj. **latentius**, which Lamb. and Or. read. But *facilius fallere* would be a mere repetition of this (Gruter). And *latius* gives a capital sense (v. explan. n.). 28. **abditum . . . permanare**. Prisc. x. 5, 28. 30: who gives **potius** for **potuit**, but supports **comestum** the reading of ST (**comesum**, R).

174.—**Page 67**, l. 1. **casum minime f. v. susp. haberet**, ST; **casum minime f. v. susp. non haberet**, b (corr.); **mortem satis f. v. susp. haberet**, four inferior MSS.; whence **mortem satis f. v. susp. non haberet**, R (read by Ry., Or.). This illustrates the value of b (corr.)—*i.e.* the corrections by a second hand in the *cod. S. Marci*, n. 106, *Lagom.* 6 (as Class. describes it)—as confirmatory of the evidence of ST as to a recension prior to that of the MSS. represented in the vulgate text. In the present instance, the 'second hand' has faithfully (though not intelligently) altered **mortem satis** of R to **casum minime** of ST, and left the negative **non** standing: this might easily happen. There is thus no real hesitation in the testimony of ST and b (corr.). But the rest vacillate between the reading with, and that without, **non**: naturally: for **casum minime** being

glossed with *mortem non satis*, *non* was lost and **mortem satis** ousted **casum minime** (as in the four inferior MSS.): then **non** was inserted before **haberet** to give the right sense. 2. **quodsi**, ST; **si**, R.

175.—8. **L. Quinctium**, ST, one MS. of Lamb.: **C. Quintilium**, R. Had this person been L. Quinctius the tribune, probably Cic. would have indicated this, nor would the name have been likely to be altered: so we might argue for the reading of Kayser, **C. Quinctium**. But the 'argument from silence' has to be employed with great caution. 10. **eaque Sex.**, ST b (corr.); **et Statio**, R; **Abbio** (or **Abtio**, or **Attio**), STM b (corr.) and others. **Albio**, R. 11. **valenti**, ST (just as *sapiens vecors audax*); **valente**, R.—In adjectives and participles of one termination, where the word is adjectivally used, the abl. may end in *-i* or in *-e*, but the former is commoner: where the word is substantival, or participial (as in the abl. absolute), *-e* is the abl. ending. Wesenberg (observ. in *Sest.* pp. 6, 7), goes too far in insisting that Cic. *always* wrote *sapienti*, etc., when the word is adjectival. 19. **de**, ST; **ex**, R.

LXIII. 176.—25. **Sassia**, bracketed (after Beck), by Bait., Kays. 27. **Rupitio**, T; **Rutilio**, S. 28. From **quendam** to § 182, **et ceterorum honestissimorum**, there is a lacuna in M. 30. **Ascla**, T and others; **Asela** (with **c** superscribed) S; **assecla**, R (including F). A Neapolitan inscr. confirms **Ascla**. **quaesituram se esse**, Lamb. The text, as Bait. says, could be emended q. **esse** *se* or q. **sese**. In *de Fin.* v. § 31, we have minamur praecipitaturos alicunde: Madv. refers to this passage and *Verr.* ii. 1, § 97, descensuros pollicebantur and ii. 2, 93, addit . . . exacturum, as instances in which there is no trace whatever of a flaw in the reading. Though he thinks the omission of the pronoun doubtful in Cic., he hesitates to deny it altogether, seeing that it is common in Caes. and Ter. We have already noticed it as an instance of colloquial usage in Cic., which (if we are to accept the testimony of the MSS. as we receive it) is by no means uncommon. V. explan. n. on § 36, posse arbitrati sunt. **Page 68**, l. 6. **vehementissime**, ST; **vehementissimis**, R. 8. **et vi tormentorum**, all MSS.; Halm thinks this interpolated; Kays., Müll. bracket. But the words give a fair sense. V. explan. n. I have felt it necessary to substitute **atque** for **et**; indeed *ipsa* can ill be dispensed with. The sylleptic use of *atque* is somewhat similar to that of § 20, ad Staienum atque ad pecuniam confugisse. Klotz conj. and reads **a vi tormentorum . . . abducti**; quoting *ad fam.* v. 13. 4, se abducere ab omnibus modestiis et angoribus, inadequate for his purpose.

177.—11. **post**, Kays. brackets. 13. **adversari**, T, and two inferior MSS., Bait., Kays., Müll.; **adversarii**, SF, and rest; **aversari**, Man. conj., Lamb., Or. Ry., Kl., which would be stronger than *iam vix ferre posse*, which follows. 24. **homo et**, om. T.

178.—25. **aperte . . . occulte**, F. 27. **Stratonem** (om. **a**), T; **per Stratonem**, S b (corr.), apparently retaining **illo**. As to b (corr.), cp. § 174, crit. n. on a similar transcription of ST.

LXIV. 179.—33. *Q.* inserted rightly by Or. That it is necessary before **Metello**, to distinguish him from L. Metellus (consul in the following year) s no reason for its omission before **Hortensio**; symmetry requires it in both cases, clearness in the latter alone. It easily fell out before the familiar name **Hortensio**. **Page 69**, l. 1. **aliquid**, STF, and rest, except one MS. Wesenb. (*ad Sest.* p. 57) rightly denies that *aliquis* can in itself=*alius quis*. The idea of *alius* is sometimes present (Verg. *A.* ii. 45, aut aliquis latet error; *Sest.* § 140, ex nostro aut aliquorum praeterea), but it has to be derived from the context; cp. § 171, ad fin. (with crit. n.), where *quid* eripuit=*quid* (*aliud*) eripuit. If it cannot thus be derived (as in the case before us), the reading must be at fault; cp. *Sest.* § 63, alia quapiam, where one MS. gives *aliquapiam*. 5. **possit**, all MSS., and most older edd.; **posset**, Lamb. in his earlier ed., Or., and all modern edd. On the principle stated in crit. nn. §§ 69, 134, I retain the MS. reading.

180.—16. **ex omni . . . serrulam**, Priscian, iii. 7. 42, who preserves **dentatam** (**dentum**, SF, etc.; **dentium**, T). Plin. *H. N.* xxxvi. 22, in Liguria . . . albus lapis dentata serra secatur. Mr. Davies (*Hermath.*, l. c.) would omit '**dentatam et tortuosam**' as an interpolation by some one who wanted to supply the defect (which he supposes) in the description. V. explan. n.

181.—26. **reciperata**, ST, a frequent variant, appearing in P, § 22. Edd. generally prefer **recup.** 28. **possitis** is an emendation of the MS. reading **potuistis** by Madv. *Adv.* ii. p. 200, who says of the latter 'nec tempus nec modus rectus esse videtur.' The MS. reading should mean 'what is this less probable view which you have been able to bring forward?' which is very poor. The confusion of indic. and subj. is not uncommon in MSS.; v. n. on *noluit*, § 149. 29. After **quaerebatur** Kays. supposes a lacuna; he thinks that words are needed for the transition to the narrative. But he places a full stop at *quaerebatur*. A reference to explan. n. will show that there is a complete sequence of thought in the section as it stands, if we punctuate **quaerebatur?** 31. **in**, om. all MSS. except ST. 32. **postea cum**, Lamb. (earlier ed.), Bait., Kays., Kl., Müll.; **postea quam**, R., Class., Ry. **Cum** and **quam** are confused elsewhere in this speech, §§ 68, 72; **postea quam** and **postea cum**, § 192, *pro leg. Manil.* § 9, Verr. ii. 3. § 57. Syntactic considerations make for Lambinus' correction. The MSS. exhibit *postquam* (*postea quam*) with the subj. only 12 times in all; a simple correction (*cum* for *quam* or indic. for subj.) is always available. In *Deiot.* § 36, Kays. reads, cum postea quam . . . devictus *est*, Tauro tenus regnare iussus esset, omnemque hanc Asiam . . . amisisset cet. (on the omission of *est* after *-us* in MSS., v. Madv. *Opusc. Acad.* i. p. 448). However, Hoffmann defends the construction. Dräg. *Hist. Synt.* ii. 592. **Page 70**, l. 2. **dedidit**, Arusianus; **dedit**, MSS. and edd. (including Class. and Ry.). Momms. conj. **detulit**.

LXV. 182.—3. **denuo**, conj. Halm, Kays., Müll. **denique** MSS., obviously wrong. Here it would=*tandem*, a very rare use: and would

imply that no *quaestio* had been set on foot before, which is not true. 9. **habuisses**, ST and one other; **habuisset**, R. Unless the reading of ST in § 15, *timuisti*, be correct, this is the only place in which Cic. addresses Sassia directly. 10. **ceterorum**, ST; **et ceterorum**, R. Such a use of *et*, to attach the last member of a series without lending it any emphasis, is not Ciceronian, except in the letters: *ad Fam.* xvi. 11. 3, consulibus praetoribus tribunis plebis et nobis, qui pro coss. sumus. Sallust has it in the *Jug.* occasionally. 14. **es**, ST and others; **est**, R.

183.—15. **posset**, almost all except ST. **ab hoc**, ST, Class., Ry.; **adhuc**, R, other edd. In the same line FM and others read **esset**, and in consequence many edd. (but no MSS.) om. **mementote**: **hoc** after **esse**, ST; om. R. Taking first (*a*) the reading **tametsi adhuc non esset dictum**: the sense is 'I can imagine what may be said (and could do so) even although it had as yet not been said': but we want *veniret*; and, even so, what does he gain by saying that he can imagine what *may* be said, when the thing *has* been said? (*b*) **tametsi adhuc non esse dictum mementote** (Kl.), or **t. a. n. esse hoc d. m.** (Bait., Kays., Müll.): the parenthesis now has some force, for the thing in question has *not* been said before; and Cic. by this anticipation is cutting the ground from under his adversaries' feet. (*c*) Still better, **tametsi ab hoc non esse d. m.** (Class., Ry.), **t. ab hoc n. esse hoc d. m.** (text): *ab hoc=ab Accio*. Though Sassia had repeatedly made the statement during the question by torture, her counsel had not availed himself of it (v. end of this section). *Ab hoc* is opposed to *mihi*. The corruption **adhuc** is easy of explanation: **abhoc, adhoc, adhuc**. Also the presence of **hoc** twice in the sentence explains its loss after **esse**. 19. **ei**: **hi**, STF. So S in next line too. 23. **eis**, ST, om. R. **utrum**: **verum**, ST. 24. After **Larini** all but ST give **fuit**. 27. **an id quod . . . dixisse**: there is some variety of reading here. **dictitavit** all MSS. but two: **dictitabat**, Lamb., Or., Ry. **Stratonem . . . dixisse**, ST, confirming conjecture of Schütz: **Strato . . . dixit**, R. To the reading of ST, Madv. objects that there is nothing to govern the infin. *dixisse*, and that the previous questions are in the form of finite sentences (utrum furtum factum non est? cet.). He would therefore read **cum id vobis dicendum est quod tum S. dictitavit** cet., omitting **quod** and **et**. This is a Procrustean method of dealing with his author. Why should all the questions necessarily have the same form? Into this one a disturbing cause has entered—the verb *dicendum est*—which has taken over the government of the rest of the clause by a kind of attraction, and the use of the infin. instead of the finite verb suggests that a figment, not a fact, is under consideration.—T has **quaereret**: act. and pass. forms are sometimes confounded: cp. § 83 n.

184.—30. **en**: **item**, ST. **mulier ab. aud.** quoted Prisc. xviii. 2. 19 (with a variant in some codd. **abundans**: here T has **abunda**), Arus. Mess., p. 209. 32. **referuntur**, S; in same line **nobisque**, all MSS. but two, like the variant in § 3; but, unlike it, not a moot point: also § 163,

vobis, two MSS. *nobis*. It is to the *jury* that the depositions are communicated. **Page 71,** l. 2. **primum,** ST b (corr.), wanted to answer to **post**: **primam,** R. **aliquod dictum adiungere,** ST; **aliquid adiungere dictum,** R. In choosing between *qui* and *quis*, *aliqui* and *aliquis*, it is best to be guided solely by the best MS. authority. V. § 7 (where the same variant occurs), explan. n.: the grammatical line between the respective forms is not a hard and fast one. Madv. (*de Fin.* ii. § 109) has unnecessarily abandoned all MSS. in reading *aliud aliquod.* Cp. his note on quae quidque (v. l. quodque) efficiat, *ib.* i. § 18: in which he refers to Classen's correction here (from ST). But here the grammatical question does not really arise: with the reading of ST, **dictum** is a subst., with that of R, a participle. *Font.* § 40 supports ST, ne dictum quidem aliquod reprehenderunt. 4. **per dolorem,** ST; Bait., Kays., Müll., Kl.; **dolore,** R, Or., Ry., Class. 5. **suspicio,** ST; **suspicione,** R. 6. **iudicarat,** almost all MSS.; **indicarat,** R; Lamb., Or.

185.—10. **et de eo,** conj. Halm. 13. **aliqua,** ST; **in aliqua,** R.

LXVI. 17. **quaestionem . . . ipsam,** om. T. 18. **obsignarit,** almost all MSS.; **obsignavit,** R; Lamb., Or. **nominatim,** ST; **nominat,** M; **nominate,** F (?). In this sentence I adopt the palmary conj. of Baiter: **dicite qui** (codd. **quis**) **obsignarit unum aliquem nominatim**; so Kays., Kl., Müll. The existence of the variant **obsignavit** perhaps confirms this. For though good edd. have read '**dicite, quis obsignavit?**' it is quite unlike Cic., who would have said, 'dicite quis obsignarit,' and might have said 'dicite qui obsignavit unum aliquem.' The genesis of the false readings would then be: *d. qui obsignavit u. al.*; this, being wrongly punctuated, gives *dicite quis obsignavit?* and this again, *dicite quis obsignarit.*

186.—23. **auctoritatem,** T and others. 24. **de,** ST; **ex,** R. So § 175. 26. For **nihil,** Sylv. conj. **aliquid,** Passerat. conj. **nonnihil,** which Lamb. and Gar. approved. But v. explan. n.: this is not a *concession*, as they understood it. 28. **servata,** ST; **reservata,** R. *Re-* is falsely inserted in § 20, retineretur (ST), § 21, renuntiavit (M): falsely omitted, § 24, nuntiant (ST) § 83 quaerebant (S) § 159 putare (all but ST). 29. **Strat. et Nicostrato,** Pluygers brackets: so Kays.

187.—31. **quem tu cum,** om. S. 32. **iudicandi,** FM and others. A frequent confusion, § 184: cp. § 82, vobis indicibus. 33. **servare** before **his,** om. T. **Page 72,** l. 5. **omnes,** om. T. 6. **servi,** ST; Bait., Kays.; **servili,** M and others; **servuli,** Lamb. and other edd. Müll. conj. **emorientis,** not badly: cp. § 30 n.

188.—22. **cognosset** (or **cognoscet**), STFM; **cognosceret,** R. After **sedemque** a few MSS. read **coniugii** which Class. and Ry. bracket, later edd. omit.

189.—29. **si,** ST; Class. and subsequent edd. except Ry. who reads **nisi** with R. Man. conj. **ni**: and this (or **nisi**) is the easier, but not therefore the preferable reading. With **nisi** (**ni**) the clause means,

'supposing that this had not been the case (viz. that Opp. conceived no plans without taking her into his confidence)': with **si** 'supposing that (something) had thus been conceived by him,' si quicquam esset sine consilio eius cogitatum. However, Wesenberg (*ad Sest.* p. 47) prefers **ni.** 31. **scelerum omnium**, ST, Class., Kays., Müll. : **scelere omni**, R. Arus. Messius (p. 216) quotes this passage for the use of *adfluens* with an *abl.* With some hesitation I have adopted the former. V. explan. n.

190.—**Page 73,** l. 1. **strueret**, ST ; **instrueret**, R. After **strueret,** T inserts **filio**, which Lamb. has, and Müll. reads in brackets. 3. **illum,** all codd. but four inferior ones, which read **istum**, and so Lamb., Or., Ry. T omits **accusatorem.** 4. **muneribus** ; Lamb. has **muliebribus** ; so, according to Gruter, seven of the eight Palatine MSS. With it, *col. fil.* and *spe hered.* would be an explanation of *donis muliebribus.* But v. explan. n.

LXVII.—5. **ita quod**, all MSS. but three, Ry., Class., Bait., Kays., Müll. **itaque**, Or. ; **itaque quod**, Lamb. (conj. ?) : Müll. suggests that **itaque** may be right, comparing *Caec.* § 71, itaque in ceteris controversiis . . . in iure nihil est eiusmodi, where we have an adversative asyndeton which forms the conclusion introduced by *itaque.* V., however, explan. n. 7. **dissidia**, many older edd. wrongly : cp. Madv. *de Fin.* (excursus ii). **vidimus**, STF, Kays., Müll., Kl. : **videmus**, M, Ry., Bait., to which Müll. inclines. But the perfect of customary action in an *independent* clause, a kind of gnomic perfect, is allowable in Ciceronian prose if introduced by a temporal adverb such as *nunquam*, *saepe*, from which indeed it derives its force : otherwise it is only found in dependent clauses or *passim* in poets and prose of the silver age. Cp. Hor. *C.* iii. 2. 29, saepe Diespiter | neglectus incesto addidit integrum : and Cic. *de Orat.* iii. § 52, nemo umquam *est* oratorem, quod Latine loqueretur, admiratus.

191.—15. **illae**, om. T. 21. **ornata**, S.

192.—22. With **atque his rebus**, M breaks off. 23. **misisset ipsa,** ST, and modern edd. except Or. : **ipsa misisset**, R. **et conducendorum**, om. S. 24. **quam**, ST, Class., Bait., Kays., Müll. : **cum**, R, Ry. : the same confusion occurs in § 181, where v. n. With the latter reading no reason could be given for the change to the indic. after the subj. *cum . . . misisset.*

LXVIII.—32. **Fabraternorum**, conj. Beroaldus from the MS. readings. **Afraternorum** (ST and most), **Fraternorum** (some inferior codd.) ; other conjectures are **Venafranorum** (Victorius), which is further from the reading of ST, **Alfaternorum** (Gruter) which takes us too far from Sassia's route. **Page 74,** l. 1. **Larino atque illam**, all MSS. As Madv. says, *atque illam* should subjoin some particular attribute of *mul. Larino*, but this it does not do, and is therefore absurd. He reads (*Adv.* ii. 201). **Larino atque illim** usque a mari sup., apparently meaning 'a woman from L., that is all the way from the shore of the Adriatic': a questionable piece of Latin surely. Pluygers reads **Larinatem illa**: the onlookers, he says, would cry 'mulier quaedam Larinas hac Romam proficiscitur ad

opprimendum illum': *illa* then = 'that way.' The correction in the text is Müller's, the most satisfactory because the clearest: *illim* = 'from Larinum.'—Ern. had bracketed **Larino**. 3. **possit**, Bait., Kays., after seven inferior codd.: **posset** R.

194.—12. **nostrorum**, all MSS. but two: **nostrum**, Class., Ry., Bait. Both forms are used, being genitive plur. of *noster*, to supply a gen. plur. of *nos* (as is also *nostri*, gen. sing. of *noster*): the former however is not elsewhere found in Cic., though occasionally occurring in the comic poets. Kl. quotes Pl. *Poen.* iv. 2. 39, nam nostrorum nemo dignus est: Liv. viii. 9, divi quorum est potestas nostrorum hostiumque. Gellius says, '*vostrorum* multifariam scriptum est pro *vostrum*,' xx. 6. 12. Probably in Cicero's time a colloquialism. 15. **putet**, all MSS. but three, Bait. No reasonable explanation could be given of a subj. here. In § 155 (for *tenetur*) § 30 (for *fuit*) we have instances of the confusion of subj. and indic. in good MSS. 20. **a suis aris atque templis nefarias preces aspernatos deos esse confido**, quoted by Arusianus, p. 216.

LXIX. **195.**—22. **quasi aliquos**, Halm conj.: **quos alios**, T: **alios**, S and many inferior codd.: **quosdam alios**, Lamb., Or., Class., Ry., explained by Ry. 'a peculiar body of deities, different from the gods whom men in general worship,' which would be tasteless exaggeration: in prose the metaphor *deos* requires to be softened, not sharpened. Class. had already conjectured **quasi** from **quos** of T. 25. **parentium**, T, which would not be the ordinary gen. of this word, except in poetry. But *-um* appears, *Rosc. Am.* § 67, *Verr.* ii. v. §§ 23, 130, 138: *Planc.* § 28: Kühner, i. § 77, 10, for other reff.; yet *parentium*, *Off.* i. § 118. 33. **in communi Italiae pace domesticis copiis esse tutum**, Lamb., Or. All MSS. have **communi I. p. in dom. cop. e. totum**, which Class. and Ry. replace, but no other modern ed. It was first amended in the Aldine ed. The conclusive correction of **in domesticis** to **non dom.**, adopted by Kays., Müll., Kl., is Madvig's. *In* and *non* are sometimes confused in MSS., *e.g.* *Sull.* § 77, si *in* (al. *non*) extremo discrimine fortuna deseret.

196.—Page 75, l. 4. **unius**: **illius**, T. 11. **assequantur**, S. Even the best MSS. sometimes confuse sing. and plur., the stroke denoting **n** being easily lost. 14. After **adsurgite** many edd. have LAVDATIO CLVENTII EX DECVRIONVM LARINATIVM DECRETO, taken from Lamb.'s MS.

197.—17. **quam incred. . . . cura est**, om. F. 18. **laudationem decretam**, S: **laudationum decreta**, R. 20. **Frentani**, F, Or., Ry., Class. In their territory, which formed the littoral of Samnium, Larinum lay: now the S. E. part of the Abruzzo Citra. V. reff. in L. and Sh.: add *Flor.* i. 18. 7. 23. **Boiano**, all MSS.

198.—26. **pecuniarias**, all MSS., Lamb., Ry., Class.: corrected by Fulvius Ursinus to **pecuarias**, on the ground that Samnium was a great grazing-ground (especially after its depopulation by Sulla, v. Momms. iii. p. 342). Quinct. § 12, erat ei pecuaria res ampla. 29. **his**: **iis**, ST, Bait. So § 118, ST have *eius* for *huius*: the confusion is not uncommon.

LXX.—30. **quam doleo abesse . . . praeditum. Vellem p. possem**: this reading is due to Classen's conj. The MSS. give **quando** for *quam doleo*, which the Juntine ed. corrects to **quam non.** With the latter reading (Ry., Class., Or., Lamb.), the former sentence is ended at **vellem** !; and **quam vellem** is inserted (after Lamb.) before **praesentem**, while **posse** is read, with a few inferior MSS., for **possem.** 33. **causa**, om. T, as also **quo** two lines on. Page 76, l. 4. **ex**, conj. Graevius: **et** all MSS. but ST, which om. **Ex** and **et** are sometimes confused: *Arch.* § 22, *ex* marmore, MSS. *e* or *et* marmoratis.

199.—8. **omnium horum**, ST. 10. **veteri**, Plin. *Ep.* i. 20. This form, rare enough in classical prose, is found *Leg. Agr.* i. § 18 (all good MSS.). 12. **caeca**, F, and other MSS. 15. **cuius ea stultitia est ut eam nemo hominem appellare possit**, Priscian (vi. 3. 15). 17. **atque etiam . . . mutavit**; two emendations have been proposed, with no MS. support; Ravius would attach this to the previous sentence, reading **quae etiam . . . mutavit**; Madvig (*Adv. Crit.* i. 89) would expunge **nomen et**, which he supposes to have been inserted by some one who did not see the antithesis between *necessitudines* and *natura*, *nomina* and *iura*, and introduced an antithesis of his own, *nomina* and *nomen.* But the text as it stands gives a forcible sense: nomina necessitudinum, the artificial ties of affinity, are contrasted with naturae nomen *et iura*, the maternal relationship of blood which is a law in itself. Also in § 12 we have naturae nomen. 19. **uti**, T, and others; **ut**, R. 20. **reservaret**, ST.

200.—21. **prohibite**, ST. 22. **parenti**, om. T. 25. **veritatem**, ST, and another; **bonitatem**, R. 28. **facto**; **fraude**, conj. Ern.

201.—31. **orat vos Hab. iud.**, Arusianus, p. 249.

LXXI.—Page 77, l. 4. **ne**, so spelt in S; **miser si**, ST, and others; **miser, iudices, si**, R. **in**, om. ST, which have **quereretur** for **queretur.** 8. **maerorum**, Bait., noting 'Incerti art. gramm. fragm., § 149 (*Anal. Gramm.* ed. Eichenf. et Endl. p. 102), maeror, λύπη. Cicero pluraliter extulit in pro Cluentio: *sed mult. medicam. maerorum.*' Cp. *de Fin.* i. § 59, aegritudines molestiae maerores. **Laborum**, codd. 9. **fortassis**, all MSS.; n. on § 144. **se**, om. ST. I have therefore bracketed it; cf. § 36, n. 10. **filii**, om. T.

202.—22. **carum**, all MSS., Cl., Ry.; **carissimum**, Lamb., and so Bait., Kays., Kl., Müll. The *inconcinnitas* of the MS. reading would be intolerable in a passage so highly wrought. There are other instances in which edd. have similarly deviated from all or from the best MSS.; *Acad.* ii. § 127, haec nostra ut exigua et minuta [minima, all MSS.] contemnimus; *leg. agr.* ii. § 96, cum suis opimis [optimis, all MSS.] atque uberibus [uberrimis, most MSS.] campis; *nat. deor.* i. § 58, de re obscura atque difficili [*v.l.* difficillima]. In such a case as *Verr.* ii. 4, § 64, eximium ac pulcherrimum facinus, the positive is in sense superlative. V. Halm on *pro leg. Manil.* § 20, and cp. § 100, l. 19. It may be added that the resonance of the endings would not offend Roman ears.

GLOSSARY OF SELECTED WORDS.

adligo: to *fasten up*, so, to *trammel*, § 179 nuptiis adligatum: § 148 lex omnes mortales adligat, so § 154 lege, 'to be binding on': § 154 L. Sulla adligare novo quaestionis genere ausus non est, 'to saddle (by his law) with . . .' In § 39, adligatum absol. 'implicated' sc. crimine: cp. *Flacc.* § 41 *scelere* se adligare.

agito (prop., as frequentative of *ago*, to *move* or *drive violently*): (*a*) to *hunt*, metaphorically used § 82: similarly **exagito** § 101; (*b*) *to turn over*, *discuss* §§ 4, 88, 139; (*c*) *to disturb* § 138, *set on foot* § 182.

auctor:

1. the *originator* or *prime mover* § 157.

2. he who makes himself *responsible for*, who *sanctions*, an act § 14.

Hence the subst. **auctoritas** (that which issues from an *auctor*), in its various uses:

(i.) *origination*, v. L. and Sh.

(ii.) (*a*) *legal responsibility for*, or (*b*) *moral support*, *sanction*: (*a*) *Verr.* ii. 2, 40, cum imperatoris a., legatorum dignitas, senatus consultum intercederet; (*b*) § 57 oratores a. praestare debent, § 176 a. advocatorum; (*c*) '*authority*' or '*warrant*' § 140 Crassi a. sequor.

(iii.) the concrete of (ii.), '*evidence*' or 'expression' of this: § 117 a. censoria; § 130, § 138 a. mea; § 124 a. censoriae *plural*, so § 139 a. nostras; § 127, § 191 quaestionibus finem amicorum a. fecit, 'emphatic opinion.' Cp. *senatus auctoritas* in technical sense.

(iv.) '*weight*,' '*credibility*,' as the *qualification* for (ii.): § 186 in tabellis nihil est auctoritatis, § 53, § 154 locus, a., domi splendor, § 140 a. senatus, § 152, cp. § 6 a. iudicum.

calamitas ($\sqrt{}$*skar* 'shear,' *i.e.* 'destroy,' in κείρω, *calvus*, etc.: or else $\sqrt{}$*kar* in κάρα *columen* 'halm,' so 'injury to the head'): (1) '*disaster*' generally, nihil in vita vidit calamitatis, quod non cet. § 18; (2) especially of the disaster of a *conviction*: si qua c. hunc in hoc iudicio adflixerit: so § 168 of the results of *proscription*, § 161 'in his misfortune,' so § 123 ne subscriptio . . . non minus calamitatis quam proscriptio possit adferre. [Cp. note on *incolumis* § 10.]

Hence **calamitosus**, 'connected with' or, of a person, 'labouring under a conviction or the danger of it': § 4, in hac c. fama: *Phil* ii. § 56, restituebat multos calamitosos.

calumnia (formed from a participial * *calvo-menos calumnus*, of *calvor* 'to trick': probably akin to κηλέω 'to bewitch'), properly the *spell* uttered by a sorcerer: so (i.) '*a malicious charge*' or '*cavil*': *ad Fam.* i. 1 (Watson 21), religionis c. 'the trumped-up plea of a religious difficulty.' Hence technically (ii.) '*vexatious accusation*,' or 'the bringing of such an accusation': sine ignominia calumniae 'without incurring the disgrace which attaches to fraudulent accusation': *c. iurare* 'to swear that one is bringing an action in good faith': the defendant might require this oath of the prosecutor: *ad Fam.* viii. 8. 3 (Watson 34). *c. ferre* 'to be convicted of bringing a vexatious accusation,' *ib.* 1. (iii.) '*conviction for calumnia*,' hic illo privato iudicio c. non effugiet § 163.

Hence **calumniator** 'a *pettifogger*,' συκοφάντης, § 163. By the lex Remmia a convicted c. was branded with the letter K.

condicio (verb *condico*, promise or stipulate; con, √dic- in dico δείκνυμι) an *agreement*, *Balb.* § 15 scientiam in foederibus pactionibus condicionibus populorum. Hence the word is variously differentiated: (1) a *proposal* for agreement, *offer*: *de Amic.* § 34 contentione uxoriae cond., so of an *invitation* to dinner (Plaut. *Capt.* i. 2, 71.) (cp. cenam alicui condico, 'promise to dine with'). (2) *terms* of agreement; common ground or *principle*: *div. in Caec.* § 25 honestiore c. quam qua ipse vult, *Mur.* § 60 iniquam legem et miseram c. instituet periculis hominum: so Attalicis condicionibus Hor. *C.* i. 1. eam c. vitae § 154 'conditions': c. supplicii propositam § 129 'system': haec ei proposita c. ut aut . . . aut . . ., 'alternatives': aequa, iniqua condicione causam dicere § 94, 'conditions': easdem vitae c. § 150. Hence it comes to mean (3) a *task* or *vocation*, o. c. miseram administrandae rei p. *Catil.* ii. § 14; (4) '*position, situation*': never quite='state.' Hor. *Ep.* ii. 1. 151, fuit intactis quoque cura condicione super communi: of the risk which all ran from satirists. *Catil.* iii. § 1, nascendi c. 'the situation to which we are born': v. Prof. Wilkins' n.: and § 155, quae si vobis c. placet, 'state of things,' 'arrangement.'

condono: to *make a present of*: hos agros . . . Rullus non vobis adsignare vult sed eis condonare, qui possident, *Leg. Agr.* iii. § 12: hence (*a*) to *sacrifice*, huius . . . vitam matris crudelitati § 195: so § 201. It implies the same *wanton* giving as Demosthenes' προπεπωκότες τὴν ἐλευθερίαν, *de Cor.* § 366; (*b*) (1) to *pardon* the offender his *offence*: (2) to *pardon* the *offender* at the prayer of another, § 109 ubi v. n.

conscius. 1. Properly *knowing a thing with another*, 'being privy to' or an 'accessory to something.' So § 56 Fabricium conscium illi facinori: § 59 conscium maleficii: so in § 60, § 179 uno ex servis puero non grandi conscio, § 180, § 183, cp. § 125: § 36 non modo conscio sed etiam conviva et adiutore Oppianico. 2. '*knowing a*

thing with oneself,' and often 'being conscious of guilt' (cp. Horace's *nil conscire sibi*).

conscientia, commonly answers to use (2) of *conscius* (cp. *constantia* from *sibi constare*).

a. in a good sense § 159 conscientiam mentis suae 'the approval of his own conscience.'

b. generally in a bad sense, 'consciousness of guilt,' 'a guilty conscience.' So §§ 25, 38, 81, 187.

c. in § 56 *conscientiae* is concrete, 'accomplices.' Cp. Wilkins on *Catil.* iii. § 27.

contio (=*conventio*, *Fest. ep.* p. 113, *i.e. coventio*): (1) a *public meeting* called by a magistrate to listen to his own speech, or that of any person whom he authorised to speak. In it the people met *en masse* without divisions such as those of the *comitia*: they heard and did not vote. So in §§ 2, 78, 103, 110, 202; (2) 'a *harangue* delivered at a *contio*.' So in §§ 77, 127. V. Ry. *Rom. Ant.* pp 104, 105.

convicium: cum in unum plures *voces* conferuntur, convicium appellatur quasi *con-vocium* Ulpian *leg.* xv. de iniuriis. So (1) a '*strife of tongues.*' So § 39 multorum conviciis, 'amid a chorus of abuse.' (2) '*loud abuse*' simply: § 74 convicium C. Junio . . . fecit ut . . . 'demanded in a bullying tone.'

dignitas: *worth*, *importance*, pro rei d. satis dixisse § 160: hence (1) *position*, political importance, municipii d. § 196, cp. §§ 197, 49; equites ordini senatorio dignitate proximos § 152, cp. § 111 n.; of an individual, cum altiorem gradum dignitatis . . . esset consecutus § 150, cp. § 95 homines se dignitate atque innocentia tuebantur: (2) *rank and its privileges*, *position and interests*, § 146 hoc vinculum est huius dignitatis, qua fruimur in republica; so § 118, (3) 'self-respect,' 'honour,' *moral dignity*: for *noblesse oblige*. So § 145 defensionis d. often thus used of *iudices*: § 107 eius d. quae in iudiciis publicis versari *delet*; the last word shows that d. is *moral* here; § 147, although here meaning (1), 'consideration,' might suit: § 202. It is a favourite word with Cic.

familia 'household': formed from * *fāma* 'house,' from $\sqrt{}$*dha* (fă-cere), which gives fămulus (*οἰκέτης*) 'belonging to the house.' *Familia*=(*a*) dependants of the *paterfamilias*, (*b*) his kinship, (*c*) or both together. For (*a*) §§ 43, 161: for (*b*) cp. § 12: for (*c*) §§ 16, 28. A further meaning (*d*) is the 'succession,' or 'property' of the family § 32.

familiaris §§ 23, 55, 166, is derived from *familia* in sense (*a*), meaning, however, 'an intimate friend.' Hence **familiaritas** § 50.

ferre: Several idiomatic uses. (1) =*secum ferre.* So § 9 quid res ipsa tulerit. Cp. Verg. *A.* ii. 75 quidve ferat 'what he has to offer.' (2) § 46 ut mea fert opinio. '*To bring it about*,' 'allow,' 'tend to.' § 168 ut aetas illa fert. (3) § 54, *obscure ferre*, opposite of *prae se*

ferre. '*To bring out*,' 'show.' Hence it may mean '*declare*,' '*relate*': as in 'ut ferunt': Hor. *C.* ii. 19, 25, 'quamquam choreis aptior . . . non sat idoneus ludo *ferebaris*. (4) in the pass. ferri libidine, etc., 'to be carried away by.'

importunus: [opp. to *opportunus*: √*par* in πόρος, 'fare,' *porta*, *portus*, *Portunus*, the god who carries ships into harbour (Verg. *A.* v. 241]: '*unfavourable to a journey*.' So (1) '*ill-omened*': obscenique canes importunaeque volucres: and as bad omens are generally exceptions to the course of nature, it comes to mean (2) '*monstrous*,' 'unnatural,' 'uncanny': mulieris importunae nefaria libido § 12, cp. § 177; (3) '*harsh*,' a more general sense: i. pauperies, Hor. *C.* iii. 16. 37, 'fretful poverty.' [Perhaps *portus*='house.' So i.= 'houseless,' 'homeless.' Thus i. pauperies: and Hor. *C.* iv. 13, 9, i. (Amor) transvolat aridas quercus.—H.N.]. Hence—

importunitas: § 170 animi i. 'his monstrous spirit': so in § 195. Cp. notes on §§ 12, 170.

integer from in and tag- (tango) '*untouched*': so (*a*) '*entire*,' 'as it was,' § 57 rem integram 'the undiscussed case'; § 154 aetatem integram 'their best years of life,' lit. 'perfect youth.' (*b*) in the neuter: de integro §§ 28, 167, 177: in integrum § 98: *integrum* meaning the '*original* position': (*c*) as opposed to *corruptus*, integer means '*unbiassed*,' 'upright,' 'unbribed.' So § 49 consilium i., 'an honourable jury': § 124, homo i.: § 47 servus integer. It is in fact equivalent to *intaminatus* (Hor. *C.* iii. 2, 18) in sense, as in etymology.

interpres (inter, √prat to *spread* hence *shew* which appears in πλατύς, φράζω): (*a*) a *middleman*, *negotiator*, i. pacis § 101: *Verr.* i. § 36 qui sequestres aut interpretes corrumpendi iudicii solent esse: on which Ps. Ascon. says, *sequestres* sunt apud quos pecunia deponitur: *interpretes* per quos inducitur pactio; (*b*) *an interpreter* § 146, i. legum iudices. Cp. Verg. *A.* iv. 378, i. divum fert horrida iussa, cp. Aesch. *Eum.* 19, Διὸς προφήτης ἐστὶ Λοξίας, 'mouth-piece,' 'spokesman.'

iudicium: from *iudex* (*ius*, *dic*- root of δείκνυμι, δίκη, dico): has four meanings in the *Cluent.*: (1) a *trial*, §§ 1, 18, 45, 88, 113, 138, etc.; (2) a *law-court*, §§ 2, 61, 77, 130, 138, etc.; (3) a *panel of jurors*, § 9, iud. corrumpere § 88, and elsewhere; (4) a *verdict* (in court or in foro conscientiae) §§ 6, 59, 80 (=ius iudicandi), 88, 122, 135, etc. [The sense 'faculty of judging' does not occur in this speech.]

n bilitas, '*high birth*,' or '*the nobility*,' §§ 11, 111, 153, 196: from **nobilis**, which properly is '*well-known*' (*gno*-bilis); § 57 medicus nobilissimus: cp. nobilis gladiator, *Rosc. Am.* § 17; hence—

(*a*) *glorious*, Catonis nobile letum, Hor. *C.* i. 12. 36.

(*b*) *high-born*, §§ 69, 109, 112; at Rome, 'possessed of the *ius imaginum*,' cp. n. on § 72: contrasted with *novus homo*, as in *Leg.*

Agr. ii. § 3 pauci nobiles in hac civitate consules facti sunt, novus ante me nemo;

(*c*) rarely=*generosus*, of *noble character*. Cp. Juv. *Sat.* viii. 19:

tota licet veteres exornent undique cerae
atria, nobilitas sola est atque unica virtus.

But Cic. *Mur.* § 17 *contrasts* 'nobilitas' with 'virtus.'

offendo (ob, *fendo) (1) act., and (2) neut.

(1) *to strike against*, § 175 latus offendisse vehementer, 'to have struck his side [against the ground].'

(2) α. *to stumble upon*:

so, *to find*, illic offendisse inimicos, § 171.

β. *to stumble against*:

so, *to displease*, neminem hic . . offendit *Balb.* § 58.

γ. absolute, *to stumble*, *come to grief*, apud iudices offendere, §§ 63, 98.

offensio: connects with *offendo* (2) β and γ.

(1) 'displeasure': § 69 invidia atque off.; 'discredit,' as in *Verr.* i. § 54 huius iudicii et laudis fructum et offensionis periculum: § 139 offensiones iudiciorum; (2) 'misfortune': § 10 nihil offensionis.

offensus: multis off. § 158, sibi offensiorem § 172, is best referred to *offendo* (1) 'stumbled against,' *i.e.* 'falling foul of,' 'odious to.'

ornare (radical meaning 'to cover' √*var*): (1) *to furnish*, § 14 lectum ornari et sterni iubet, cp. *Leg. Agr.* ii. § 90 ad bellum instruendum et ad exercitus ornandos; § 178 instructam et ornatam tabernam, 'fitted up.' Metaphorically, of honourable attributes, homines honesti et omnibus rebus o. § 176, 'respectable men with every honourable recommendation.' So § 198 ornatissimum; (2) to *furnish well*, *i.e.* *set off*, *adorn*, § 58 cum illa verba ornandae orationis causa dixisset, § 140 o. senatum laudibus: so *Leg. Agr.* ii. § 23 o. hunc iustissime posse, of 'conferring office' upon a person.

ornamentum corresponds: (1) prop. *trappings*, implying however something more distinctive than *vestis*: *e.g.* Pl. *Capt.* iii. 4. 83, ornamenta absunt: Aiacem, hunc quom uides, ipsum uides, of the conventional costume of Ajax on the stage: in the aedile's edict, apud *Dig.* xxi. 1. 238, of 'horses' trappings.' So of the political privileges associated with a certain rank, omnibus o. amissis § 120. So in §§ 153, 154, of the distinctions of senatorial rank, explained by locus auctoritas domi splendor cet. § 154; (2) '*decorations*, *adornment*,' verborum ornamenta § 107: § 132 n. on cetera ornamenta. So Cic. often calls a man o. civitatis, etc.

peroro (*per*, *oro* prop. 'to speak,' cp. *orator*): (*a*) '*to plead throughout*,' gen. with *causam*: § 164 quam paucis verbis haec causa perorari potuerit, 'could have been despatched,' cp. Liv. xxxiv. 31 breviter peroratum esse potuit nihil me . . commisisse, § 199 totam hanc causam . . solus peroravi, where v. note: (*b*) '*to finish one's speech*,'

§ 6 cum peroraro, § 59 ut reliqua posset p., § 145 lege recitata perorassem; (*c*) '*to finish the advocacy of one side*,' *i.e.* 'make the final speech,' *Sest.* § 3 a Q. Hortensio causa est P. Sesti perorata: cp. *Orat.* § 130 etiam si plures dicebamus, perorationem mihi tamen omnes relinquebant.

persona (per-sŏno) an actor's *mask*: hence (*a*) the *rôle* or *part* played: a *character*. So in this speech § 59 Oppianici persona causaque, § 78 huius Staieni persona, § 101 persona viri boni suscepta, § 125 supposita persona ('by fraudulent impersonation'—very near the original sense). (*b*) There was a limited number of masks in the ancient comedy, as of characters—the old man, the parasite, etc. They were *types*; so p. comes to mean 'a type,' 'one of a class': *Arch.* § 3 in eiusmodi persona uti novo genere dicendi, 'in dealing with this *type*, viz., the literary man.' [(*c*) In mediaeval language, 'a person or corporation invested with rights'—(hence '*parson*,' the man who 'suscipit parochiae personam' in legal matters):] (*d*) post-Aug. a '*person*,' an individual as such. Cp. Ry. on § 101: Mr. Reid on *Sull.* § 8: for metaphorical language taken from the stage v. *Mur.* § 6.

pono (for *posino* from a prep. *port*=προτί, πρός, and *sino* to *place*): (1) to *put*; mens . . . civitatis posita est in legibus § 146: so § 17; hence cui *posita sunt in vobis* omnia § 200, ἐφ' ὑμῖν κεῖται, 'whose all is in your hands'; (2) *set up*, statuas § 101: (from this comes the meaning *portray*, τιθέναι, pone Tigellinum, Juv. i. 155); (3) hence to *set up* in *thought*, *i.e. assume*, *posit*; coupled with *concedo* in *de Divin.* i. § 118, and common in Cic.'s philosophy: akin to this is *ponere exemplum*, 'to cite' § 119; (4) to *put away*, *lay by*: domi suae tantum nummorum positum § 70; (5) to *lay aside* § 5: so pone metum Verg.; (6) to *lay out*, *invest* money, dives positis in fenore nummis Hor. *A. P.* 421: hence metaphorically curam in . . . periculis defendendis § 157, cp. *Mur.* § 45 omnem curam in petitione non possit ponere; (7) to *set down* in accounts, *reckon*, θέσθαι: cp. Hor. *C.* i. 9. 15 lucro appone 'put down to the credit side,' *i.e.* reckon as clear gain, with *Flacc.* § 40 hoc in lucro ponere.

So in culpa § 127, *Sest.* § 139 has 'in laude positos.' Perhaps *Fam.* xv. 4. 12 *in* beneficii *loco* non pono gives the original form of the expression: as compared with § 57 in honore atque in beneficio ponerent. So *in* culpa etc. may=*in* culpae *loco*, cp. § 62 in loco maledicti objectum 'by way of.'

probo, from *probus*: in this speech (1) to *make out to be good*, often with dat. of the person, as well as the acc. (*a*) of *things*; causam § 8, § 63 bis eis causam probavisset, § 102: § 3 dicendo probare 'to prove': of making out a plausible story, § 61 illum expertem eius consilii fuisse non probabatur, § 98 probaverint . . . se . . . oportere, 'made good their claim to . . .' § 101 nummarius interpres . . . non probabatur,

'the theory of a venal arbitrator . . . would not hold,' 'was not satisfactorily upheld'; § 138 iudiciorum quae probata non essent: § 158, § 181 cui probatis? (*b*) of *persons*: § 52 cui probatus esset ipse patronus, 'to whom he had approved himself,' § 77 iudicia eius ordinis populo p. (2) to *hold as good*, to *approve*: § 16 ea . . . non solum videre verum etiam probare suo iudicio, § 128 illud minime probandum quod . . ., 'to sanction, indorse, approve'—the meaning '*assay*' is not Ciceronian. But in this and meaning (2) δοκιμάζω coincides with *probare*. [*Probo* however often means '*to pass work*,' *i.e.* judge it to be sound: probatio (columnarum) erat tua, 'it was your business to see that they were sound,' *Verr.* ii. 1. 142.—H. N.]

praevaricari [*prae* 'past' and *varicari* 'to walk crookedly' (akin to *varus varius*)] prop. of a ploughman driving a furrow crooked: hence metaphorically (1) of an accuser, 'qui colludit cum reo,' *i.e.* conducts his case in the interest of the other side, 'to be guilty of collusion': so § 87 an [pecuniam dedit] ut praevaricaretur? 'was it to induce Cluentius to betray his case to the defence?' (2) of the advocate on either side, who conducts his case disingenuously: § 58 ut interdum non defendere sed praevaricari accusationi videretur. Hence **praevaricator**: *Pis.* § 23 P. Clodius is called Catilinae p., 'sham accuser,' having been bought off by him, when he impeached him for extortion. [V. Ry. *Rom. Ant.* p. 314.]

quaestio: (1) '*act or process of inquiry*': (*a*) judicial inquiry, '*trial*': § 90 illa tandem q. aut disceptatio aut iudicium fuit? §§ 96, 137, 159, etc. (*b*) '*examination*,' especially by torture, §§ 177, 181, 182 q. de viri morte habebatur; (2) concrete, '*the results of such examination*,' § 185 hanc fictam q. conscripsisse, and again, q. obsignare; (3) more concrete, '*the court of inquiry*,' the persons who inquire: § 1, § 147 quid M. Plaetori . . . inter sicarios . . . quid reliquae quaestiones? §§ 148, 151, 155, etc. Especially of the *q. perpetuae*, or Standing Commissions to try criminal cases, the first instituted being that by L. Calpurnius Piso, B.C. 149, to try cases of *repetundae*. Such *standing* commissions contrast with the special commissions which preceded them, and which consisted of *quaestores* to whom the supreme court, the *comitia*, delegated its powers in certain cases. Cp. n. on § 147, also Ry. *Rom. Ant.* pp. 289, 290.

ratio (re-or; $\sqrt{\text{ra}}$ or $\sqrt{\text{ar}}$, to *join*, so *put together*, *reckon*): (1) *reckoning*; hence (*a*) *accounts* of money or otherwise, rationem repeti a senatore § 104, r. reddere §§ 106, 155: (*b*) *business*, r. contrahere § 41: (*c*) more generally, the *relation* or *bearings* of anything, r. temporis § 141 'the requirements of the time': officiorum et amicitiarum r. conservata § 117; (2) *consideration* as a special form of reckoning, r. venefici criminum § 1: hence concretely (*a*) a *problem* or *particular case*, Cluenti ratio cum illis legibus . . .

nulla potest ex parte esse coniuncta § 96 'the case': § 141 r. utriusque temporis 'requirements'; (*b*) in plur., '*interests*' § 69 suis r. utilius; (3) *thinking* in general: hence concretely (*a*) the *faculty of thinking, reason:* § 6, § 15)(amentia; § 13 consilium et r., so also § 185: (*b*) *method* of reasoning, so via ac r. procedere='scientifically': (*c*) *tendency*, florens in populari ratione 'a leader of democratic tendencies': *Sest.* § 101; (4) more objective, 'scientific system' '*theory*,' r. censoria 'theory of the censor's functions' § 118. Hence (*a*) *method of procedure* § 36)(res ('execution') § 45 in alia r., § 64 'policy'; (*b*) '*way*' '*manner*' generally: § 20, § 51, § 63 r. corrumpendi iudicii § 68. Notice especially mortis r. § 175 'circumstances': instituta r. vitae § 42 (so § 46), cp. § 101 tota vita in eiusmodi r. versata: cp. *Cael.* § 45 in eo . . . inerat r. et bonis artibus instituta et cura et vigiliis elaborata 'a rule of life.' Sometimes it supplies a periphrasis for an abstract subst., investigandi r. § 23='investigation'; (5) another objective use: '*reasonable ground*,' § 64 r. nullam huic corrumpendi iudicii. So '*motive*' r. illius iudicii § 92: r. accusationis § 19. [This is based on Näg. § 63.]

religio [derivation a matter of ancient dispute: (1) from *relegere* 'to consider,' cp. Hom. θεῶν ὄπιν οὐκ ἀλέγοντες, so, 'serious feeling': (2) from * *religere* (ligare), religion as a 'binding force.' The second better expresses the attitude of the primitive Roman worshipper.] **A.** *subjective:* (*a*) a 'scruple' or *particular* sense of obligation § 129 fidem suam et r. pecunia commutarit: (*b*) of character *in general*, 'conscientiousness' §§ 53, 107, 121 r. et diligentia, § 194 pietate et r. deorum mentes posse placari, 'piety' in general. **B.** *a middle stage:* 'dictate of conscience' § 121 suae potius r. quam censorum opinioni paruerunt: so § 158. **C.** *objective*, (1) 'that which binds'; an 'oath,' especially the juror's, lex et r. § 159: (2) 'a sacred place or object,' Verg. *A.* ii. 151 quae religio aut quae machina belli, of the Horse. This very concrete use is commonest in the plural: § 43 veteribus institutis religionibusque: but Verg. *G.* i. 269, rivos deducere nulla *religio* vetuit 'religious ordinance.' Cp. § 158 crit. n. (3) 'sacred character': *Verr.* ii. I. § 14 probabit fidem et auctoritatem et r. suam, 'sacred office,' impuro homini atque indigno illa religione (sc. sacerdotio) *Sest.* § 56.

scurra (√skur in ξύρω Σκύλλα) implies *sharp* or *trenchant* wit: (1), the idea being that of the wit and scandal of men of fashion, '*a beau*' or '*exquisite*': urbani adsidui cives quos scurras vocant Pl. *Trin.* 202: cp. Catull. xxii. 9, 12. (2) The wit is paid wit: '*a buffoon*' or professional diner-out. So in Hor. and Cic. always: the scurrarum convicia were proverbial (*Mur.* § 13, Hor. *Serm.* i. 5. 52). Something low and under-bred is implied now (§ 39): the scurra is witty

(Quinct. § 11) and may be wealthy (ib. § 55), but is always a nobody (*Phil.* xiii. § 23).

sedulo, § 58 'studiose, ex animo' MAN. adv. of *sedulus*: probably from √sad, to *sit:* hence it means, (1) 'set down to a thing,' 'busily occupied on it' (versessen auf etwas). *Sedulo facere* 'to be in earnest,' 'do one's best.' (2) 'on purpose': ad id s. diem extraxerat Scipio, ut sera pugna esset, Liv. xxviii. 15: but this use is not Ciceronian.

sequester *sequent-tro-*, [formed from participial of *sequi*: 'dictus a sequendo, quod eius qui electus sit utraque pars fidem sequitur' Serv. on Verg. *A.* xi. 133: 'he whose services two parties *petition*': cp. note on *sector* § 163] 'a depositary,' one with whom disputed property is lodged till the claims of the disputants are settled: μεσέγγυος. Plaut. Vidul. fr. 4 vidulum ('trunk') hic adponite: | ego servabo, quasi sequestro detis: neutri reddibo | donicum haec diiudicata res est. Hence (1) metaph. 'a mediator': pace sequestra Verg. *A.* l. c. (2) 'a person with whom bribe-money is deposited by the bribers in trust for the bribed,' neither party trusting the other. So in §§ 25 sequestre in illo iudice corrumpendo, (where v. Ry.), 72, 87. V. Ry. Rom. Ant. p. 179 on the organised system of bribery at Rome. Cp. also '**interpres.**'

splendor: (1) The word implies '*stateliness*' or '*magnificence*,' as a virtue or characteristic of wealthy public men; applied in §§ 153, 154 to the position of the Senators in respect of 'honores' in the State. Sull. § 73 dignitatem liberalitatem *moderationem* in privatis rebus, *splendorem* in publicis. It is specially applied to the equestrian order, as *amplitudo* is to the senatorial (*Rosc. Am.* § 20). The former was the moneyed class at Rome, it must be remembered. When less strictly applied, tr. '*prestige*.' It does not imply quite so much as the English 'splendour'; but answers rather to the μεγαλοπρεπεία of Aristotle, which implies not mere barbaric display, but 'doing things on a large scale, and as one's position requires,' τὸ ἐν μεγάλῳ μέγα: a virtue which presupposes high station in its possessor. (2) 'spotlessness,' § 46 municipum: so § 198. Prof. Nettleship quotes *Rep.* ii. 69 ut sese splendore animi et vitae suae sicut speculum praebeat civibus: *Planc.* § 30: Hor. *C.* iv. 7, 21 et de te splendida Minos fecerit arbitria: Liv. iii. 35. 9.

video: a few modifications of the simple meaning: (1) *perceive* § 188 videtis non sine necessariis me causis dixisse: *et saep.* (2) *consider*, videamus ecquod aliud iudicium proferre possimus § 103: an idiomatic use with 2 Fut. iam videro § 146 v. n.: (3) *take care*, vide ne mea coniectura sit verior § 97: (4) '*look on*' *rectis oculis*, περιορᾶν, § 16 non solum videre verum etiam probare, § 129 te sciente et vidente:

(5) *look to*, haec sunt videnda § 159 : cp. *ad Att.* v. 1. 3, antecesserat, ut prandium nobis videret, and Theocr. *ὅρη δίφρον, Εὐνόα, αὐτᾷ* : (6) *find*, especially with Past Inf., § 119 video animadvertisse censores, so §§ 103, 127 (twice) : cp. *Arch.* § 1 inde usque repetens hunc video mihi principem . . . exstitisse. [Some of these usages are imperfectly distinguished in Dictt.]

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(*Reference is made to the Critical Notes and Explanatory Notes by the abbreviations* cr. *and* n. *respectively.*)



Printed by T. and A. Constable, Printers to Her Majesty,
at the Edinburgh University Press.

